ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MCI WORLDCOM COMMUNICATIONS, INC., A Delaware corporation; and MCIMETRO ACCESS TRANSMISSION SERVICES LLC, a Delaware corporation, Plaintiffs, v. BELLSOUTH TELECOMMUNICATIONS INC., a Georgia corporation; the FLORIDA PUBLIC SERVICE COMMISSION; E. LEON JACOBS, JR., in his official capacity as Chairman of the Florida Public Service Commission; and J. TERRY DEASON, LILA A. JABER, BRAULIO L. BAEZ and MICHAEL A. PALECKI, in their official capacities as Commissioners of the Florida Public Service Commission, Defendants.	990649-TP Civil Action No. _____

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FLORIDA PUBLIC SERVICE COMMISSION
DIVISION OF APPEALS

COMPLAINT
FOR DECLARATORY AND EQUITABLE RELIEF

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Plaintiffs MCI WORLDCOM Communications, Inc., and MCImetro Access Transmission Services LLC (collectively

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"WorldCom"),[1] by and through undersigned counsel, for their complaint against BellSouth Telecommunications, Inc. ("BellSouth"), the Florida Public Service Commission ("Commission" or "PSC"), and Commissioners E. Leon Jacobs, Jr., J. Terry Deason, Lila A. Jaber, Braulio L. Baez and Michael A. Palecki (collectively, "Commissioners"), in their official capacities, hereby complain and allege as follows:

NATURE OF THE ACTION

1. This action is asserted to enforce various provisions of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. ("1996 Act" or "Act"), a landmark statute designed to open local telephone markets to competition. The 1996 Act was passed to end the historical regime in which incumbent local telephone companies (such as Defendant BellSouth) monopolized the "facilities" (the network equipment) and services through which consumers place and receive all local and long distance calls. In its place, the 1996 Act mandates a new competitive structure. To that end, the Act

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1/ Plaintiffs MCI WORLDCOM Communications, Inc., and MCImetro Access Transmission Services LLC are wholly owned subsidiaries of WorldCom, Inc.

preempts state and local barriers to market entry and requires incumbents to provide new entrants into local telecommunications markets (such as Plaintiff WorldCom) with access to the incumbents' telephone networks and services on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. These requirements are specifically intended to open monopoly local telephone markets to effective competition as quickly as possible.

2. In addition to obligating incumbents to open their networks to new entrants on pro-competitive terms, conditions, and rates, the Act sets forth a procedural mechanism to implement these requirements and hasten the development of competition. Under this scheme, incumbents are required to negotiate in good faith with new entrants and to develop "interconnection agreements" specifying the terms and conditions upon which the new entrant may access the incumbent's network.

3. Where the parties cannot arrive at a complete interconnection agreement through voluntary negotiations, the Act gives the state commission the opportunity to conduct expedited administrative proceedings, designated as

"arbitration" proceedings, to resolve disputed issues in a manner consistent with the substantive requirements of the Act and the implementing regulations adopted by the Federal Communications Commission ("FCC"). Section 252(e)(6) of the 1996 Act, 47 U.S.C. § 252(e)(6), gives aggrieved parties a right to bring an action in federal district court to challenge the terms of an interconnection agreement, as finally approved or rejected by the state commission, on the ground that they are inconsistent with the 1996 Act or the FCC's implementing regulations.

4. On June 19, 1997, the PSC issued its final approval of the interconnection agreement ("Agreement") between WorldCom and BellSouth. The United States District Court for the Northern District of Florida subsequently reviewed the Agreement and invalidated certain provisions, including the rates at which new entrants were allowed to lease the unbundled network elements ("UNEs") of BellSouth's network. MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 112 F. Supp. 2d 1286 (N.D. Fla. 2000). The District Court's decision is currently under review in the United States Court of Appeals for the

Eleventh Circuit. MCI Telecommunications Corp., et al. v. BellSouth Telecommunications, Inc., et al., Nos. 00-13505 & 00-13575 (11th Cir.).

5. In 1999, the PSC commenced generic pricing proceedings to determine terms applicable to all BellSouth interconnection agreements (the "Pricing Proceedings"). As part of those proceedings, the PSC issued an order on May 25, 2001, in which it, among other things, set new rates for BellSouth's unbundled network elements and required that those rates be incorporated into all existing and future BellSouth interconnection agreements, including the WorldCom-BellSouth Agreement. See Final Order on Rates for Unbundled Network Elements Provided by BellSouth, In re: Investigation into pricing of unbundled network elements, Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP (Fla. PSC May 25, 2001) ("Pricing Order") (attached as Exhibit A).

JURISDICTION

6. These claims arise under the Telecommunications Act of 1996, a law of the United States, and under the FCC's regulations implementing that Act. Jurisdiction is proper

pursuant to 28 U.S.C. §§ 1331 and 1337 and pursuant to Section 252(e)(6) of the Act, 47 U.S.C. § 252(e)(6).

7. Jurisdiction is also proper pursuant to 28 U.S.C. § 1332. There is complete diversity among the parties, and the amount in controversy well exceeds the requisite $75,000 because Plaintiffs' ability to enter profitably much of Florida's local telephone markets and compete effectively is largely dependent on the UNE rates at issue here.

VENUE

8. Venue in this District is proper under 28 U.S.C. § 1391(b). All defendants reside in Florida, defendant Commission is located in this District, and the events giving rise to the claims asserted herein occurred in this District. This Court is thus the "appropriate" district court within the meaning of Section 252(e)(6) of the 1996 Act.

PARTIES

9. Plaintiffs MCI WORLDCOM Communications, Inc., and MCImetro Access Transmission Services LLC are corporations organized under the laws of the State of Delaware, with their principal place of business in the State of

Mississippi. Plaintiffs provide telecommunications services in Florida. Both MCI WORLDCOM Communications, Inc., and MCImetro Access Transmission Services LLC are wholly owned subsidiaries of WorldCom, Inc., and both are "telecommunications providers" and "requesting telecommunications carriers" within the meaning of the Act.

10. Defendant BellSouth is a Georgia corporation that is authorized to do business in the State of Florida, with its principal place of business in the State of Georgia. BellSouth is the provider of local exchange service throughout a service area covering large portions of Florida. BellSouth is an "incumbent local exchange carrier" within the meaning of Section 252(h)(1) of the Act and a "Bell Operating Company" within the meaning of 47 U.S.C. § 153(4)(A)-(C).

11. Defendant Commission is a legislative agency of the State of Florida and is a "state commission" within the meaning of 47 U.S.C. §§ 153(41), 251 and 252.

12. Defendants Jacobs, Deason, Jaber, Baez and Palecki are Commissioners of the Florida Public Service Commission. They are being sued in their official capacities only.

BACKGROUND

The Local Telephone Monopoly

13. Since the divestiture of the Bell System in the early 1980s, vigorous competition has characterized the long-distance telephone services market, resulting in much lower long-distance rates and much better service quality. Local telephone service, however, has remained the last major bastion of monopolies in the telecommunications industry. Incumbent local telephone companies have exercised "bottleneck" control over the local telephone network, including the lines (or "local loops") serving each telephone subscriber. Despite regulation by state public utility commissions, this monopoly power produced anticompetitive rates for local services, hampered the development of new services, and deprived customers of the ability to choose their local service provider. Almost all long-distance calls also originate and terminate through that same local network. Incumbents thus had a monopoly over this long distance access function as well. Because monopoly local telephone companies were permitted to charge long distance carriers inflated "access charges" to

originate and terminate long-distance calls, the local telephone monopoly also artificially inflated long-distance rates over what they would have been in a fully competitive telecommunications market.

14. In its service areas, BellSouth has an effective monopoly in the provision of "local exchange service" (local telephone service) and "exchange access services" (originating and terminating long distance calls).

The Local Competition Provisions of the 1996 Act

15. The 1996 Act "provide[s] for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." H.R. Conf. Rep. No. 104-458, 104th Cong., 2nd Sess. 113 (1996). The centerpiece of that policy framework is Congress's effort to bring effective competition to the historically monopolized local telephone markets.

16. To help bring the benefits of competition to local telephone customers, Section 253 of the Act overrides any

state laws (such as exclusive franchises) that have the "effect" of prohibiting any entity from offering any interstate or intrastate telephone service. The Act also conditions the ability of regional Bell Operating Companies ("Bell Companies"), incumbent local telephone companies that were formerly part of the Bell System, to enter the long distance telephone market within their service areas on their demonstrated compliance with the Act's provisions granting new entrants access to the Bell Companies' facilities and services. See 47 U.S.C. § 271(c)(1)(A), (2)(B).

17. Congress recognized that local competition could not develop unless new entrants were afforded access to the bottleneck local exchange facilities that incumbent monopolies had constructed over decades with funds obtained from captive ratepayers. Because no new entrant could realistically compete in all markets through the exclusive use of its own facilities, and because Congress recognized that shared use of bottleneck facilities was sometimes more efficient than duplication of those facilities, the 1996 Act's scheme for facilitating local competition consists

largely of a set of affirmative obligations on incumbent local carriers to make their facilities and services available for purchase or lease by new entrants.

18. The Act requires incumbents to make their facilities available to new entrants in a variety of ways. Under Section 251(c) of the Act, incumbents must, among other things: allow new entrants to interconnect their facilities with the incumbents' networks at "any technically feasible point" for the purpose of transferring calls to or from the incumbents' networks, see 47 U.S.C. § 251(c)(2); offer the constituent parts or "elements" of their networks for leasing by new entrants on an element-by-element or "unbundled" basis, see 47 U.S.C. § 251(c)(3); make any telecommunications service that the incumbent offers its own customers available to new entrants at wholesale so that new entrants may resell those services to their own customers, see 47 U.S.C. § 251(c)(4); and allow new entrants to construct facilities necessary for interconnection at the incumbents' premises, referred to as "collocation," see 47 U.S.C. § 251(c)(6).

19. Congress also understood that incumbent local telephone companies would retain strong incentives to obstruct their prospective competitors' efforts to enter the local market. In particular, Congress recognized that allowing incumbents to dictate the rates, terms, and conditions upon which their prospective competitors may access the incumbents' bottleneck facilities would stifle competition just as surely as statutory or regulatory restrictions on entry. Therefore, the Act contains a number of provisions specifically designed to prevent incumbents from acting on their built-in incentives to price new entrants out of the market by charging unreasonable rates or imposing unreasonable and discriminatory conditions for interconnection, network elements, resale of incumbent services, and other statutorily mandated forms of competitive access.

20. Section 251(c) provides that incumbents' rates, terms, and conditions for interconnection and unbundled network elements must be "just, reasonable, and nondiscriminatory." Section 252(d)(1) provides that rates for interconnection and network elements must be "based on

the cost . . . of providing the interconnection or network element," and specifically provides that cost-based rates may not be predicated upon "rate-of-return or other rate-based proceedings" of the sort that prevailed in the monopoly era. Section 252(d)(3) provides that incumbents must offer telecommunications services purchased by new entrants for resale at wholesale rates determined by subtracting from the incumbent's retail rates all costs the incumbent will avoid as a result of not providing the service at retail. Section 252(d)(2) requires charges for the transport and termination of traffic originating on another carrier's network to "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" and that those costs be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." That section also specifically prohibits state commissions from engaging "in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls." The Act similarly constrains incumbents' pricing power as to other forms of competitive

access, such as collocation and access to poles, conduits, ducts, and rights-of-way.

21. The Act expressly authorizes the FCC to promulgate regulations implementing the Act's local competition provisions. 47 U.S.C. § 251(d); see also AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999). Pursuant to that authority, the FCC released its First Report and Order containing implementing regulations on August 8, 1996. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order ("Local Competition Order").

22. Among other things, the Local Competition Order and the implementing regulations prescribed a mandatory cost methodology, known as the "Total Element Long Run Incremental Cost" or "TELRIC" methodology, for setting the rates at which an incumbent must lease the individual components of its network, known as unbundled network elements ("UNEs"), to new entrants, see Local Competition Order ¶¶ 672-732; 47 C.F.R. §§ 51.503-51.505. The implementing regulations also called for rates to account for variations in the costs associated with providing UNEs

and interconnection in different geographic areas within states with different population densities, a method known as "geographic deaveraging." Specifically, the regulations require state commissions to "establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences." 47 C.F.R. § 51.507(f).

23. Section 252 of the 1996 Act sets forth an expedited procedure for implementing the Act's substantive provisions. Under Section 252(a), incumbents are required to negotiate in good faith with any requesting telecommunications carrier concerning the terms and conditions governing interconnection, access to network elements, resale and other issues that must be resolved to allow for competitive entry. The Act provides for a fixed period of negotiations during which the parties may voluntarily agree to rates, terms, and conditions for interconnection. If the parties do not reach voluntary agreement on all issues within that period, either party may seek "compulsory arbitration," an expedited administrative proceeding to resolve disputed issues of fact and law, which

may be conducted by the state regulatory commission. 47 U.S.C. § 252(b). When performing arbitrations, the state commission must ensure that the arbitrated terms of interconnection comply with the requirements of Sections 251 and 252(d) of the Act and the FCC's implementing regulations. 47 U.S.C. § 252(c).

24. A proposed interconnection agreement, whether developed through voluntary negotiations alone or through arbitration, must be submitted for review to the appropriate state commission pursuant to Section 252(e). The state commission then may review the agreement and resolve any disputed issues in compliance with the requirements of Sections 251 and 252(d) of the Act and applicable FCC regulations. 47 U.S.C. § 252(e)(2)(B).

25. The 1996 Act provides for federal district court review of the terms for interconnection as incorporated into interconnection agreements and approved by state commissions. As part of this review, federal courts are required to "determine whether the agreement . . . meets the requirements" of Sections 251 and 252. Because terms that are inconsistent with the FCC's implementing regulations

also violate the Act, 47 U.S.C. § 252(c), (e)(2)(B), the federal court's mandate under Section 252(e)(6) includes review of agreements and their terms for compliance with FCC regulations.

The WorldCom-BellSouth Arbitration and Approval Proceedings

26. After a lengthy period of negotiations with BellSouth regarding interconnection, WorldCom filed a petition for compulsory arbitration of unresolved issues with the PSC pursuant to Section 252(b) on August 15, 1996. These issues included, among others, the appropriate rates for unbundled network elements.

27. WorldCom's request for arbitration was consolidated with a request filed by AT&T Communications of the Southern States, Inc. ("AT&T"). Thereafter, hearings were held on the issues raised in the parties' petitions, and post-hearing briefs were submitted. The PSC issued its Arbitration Order on December 31, 1996. Final Order on Arbitration, In re Petition by AT&T et al., Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-96-1579-FOF-TP (Fla. Pub. Serv. Comm'n Dec. 31, 1996) ("Arbitration Order"). BellSouth filed a motion for reconsideration on

January 15, 1997. While that motion was pending, WorldCom submitted an interconnection agreement reflecting the conditions set forth in the Arbitration Order, and identifying the sections of the agreement on which the parties could not agree. On March 19, 1997, the PSC issued an order addressing the motion for reconsideration and amending the Arbitration Order accordingly. Final Order on Motions for Reconsideration and Amending Order No. PSC-96-5179-FOF-TP, In re Petition by AT&T et al., Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-97-0298-FOF-TP (Fla. Pub. Serv. Comm'n March 19, 1997).

28. On March 21, 1997, the PSC issued a Final Order approving the agreement submitted by WorldCom and requiring the parties to file a signed final agreement incorporating the PSC's determinations into the agreement within two weeks. Final Order Approving Arbitration Agreement Between MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc. and BellSouth Telecommunications, Inc., In re Petition by AT&T et al., Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-97-0309-FOF-TP (Fla. Pub. Serv. Comm'n March 21, 1997).

WorldCom signed and submitted an agreement within that time frame, but BellSouth refused to sign and instead submitted its own version.

29. On May 27, 1997, the PSC issued an order approving the version of the agreement submitted by WorldCom and ordering both parties to sign and file that agreement. Order on Agreement Between MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc. and BellSouth Telecommunications, Inc., In re Petition by AT&T et al., Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-97-0602-FOF-TP (Fla. Pub. Serv. Comm'n May 27, 1997). The parties complied, and the PSC approved the Agreement on June 19, 1997. Order Approving Agreement, In re Petition by AT&T et al., Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-97-0723-FOF-TP (Fla. Pub. Serv. Comm'n June 19, 1997).

30. Among other things, the PSC's Orders set UNE rates that were based on a cost model submitted by BellSouth. The PSC acknowledged that the rate methodology it employed did not comply with the FCC's rules. Arbitration Order at 24-25.

31. On June 30, 1997, WorldCom filed a complaint in the United States District Court for the Northern District of Florida, pursuant to Section 252(e)(6) of the Telecommunications Act, for review of the parties' Agreement. There, WorldCom alleged that several of the Agreement's provisions, including the rates for unbundled network elements, were unlawful under the Act and inconsistent with the FCC's implementing regulations. After numerous rounds of briefing, the Court found, among other things, that the UNE rates set by the PSC and contained in the parties' Agreement were inconsistent with the FCC's binding regulations and ordered the PSC to reconsider those rates. MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 112 F.Supp.2d 1286 (N.D. Fla. 2000).

32. BellSouth appealed that decision to the United States Court of Appeals for the Eleventh Circuit. The Commission also appealed the District Court's decision, although the Commission did not challenge that Court's pricing determination. Argument before the Eleventh Circuit is set for January 17, 2002.

33. In the meantime, BellSouth and WorldCom negotiated the terms of new interconnection agreements, and on May 26, 2000, WorldCom sought a new arbitration proceeding before the PSC on the contested issues relating to that new agreement. In re: Petition of MCImetro Access Transmission Services LLC and MCI WORLDCOM Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996, Docket No. 000649-TP. Administrative hearings were held, with the understanding that the PSC already had set rates in the Pricing Proceedings for incorporation into those new agreements between BellSouth and WorldCom. BellSouth and WorldCom have filed their new agreements as arbitrated by the PSC.

The Pricing Proceedings

34. On December 10, 1998, a group of new entrant carriers and competitive carrier organizations - including, among others, WorldCom, the Florida Competitive Carriers Association, the Telecommunications Resellers Association, AT&T, the Competitive Telecommunications Association, MGC

Communications, Inc., Intermedia Communications Inc., Supra Telecommunications and Information Systems, Florida Digital Network Inc., and Northpoint Communications, Inc. - filed with the PSC a Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory, Docket No. 981834-TP.

35. The PSC granted the competitive carriers' request in that Petition to open a generic pricing docket for the three major incumbent local exchange carriers in Florida: BellSouth, Sprint-Florida Inc. and GTE Florida Inc. (now known as "Verizon"). In May 1999, the PSC opened the docket under review - Docket No. 990649-TP - to address UNE pricing, as well as the methodology for deaveraging prices for UNEs.

36. Administrative hearings were held in two phases: the first in July 2000, and the second in September and October 2000.

37. The first set of hearings addressed issues that did not significantly hinge on BellSouth's cost model for loops. Those initial hearings went forward from July 17,

2000, to July 19, 2000, and involved all three incumbent carriers.

38. After a decision by the United States Court of Appeals for the Eighth Circuit was issued on July 18, 2000, in Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Cir. 2000), cert. granted sub nom. AT&T Corp. v. Iowa Utilities Board, 121 S. Ct. 878 (2001), Verizon and Sprint-Florida Inc. each requested that the proceedings involving Verizon and Sprint-Florida be put on hold until appeals challenging the FCC's UNE pricing methodology are finally resolved at the federal level. BellSouth made no such request and indicated in its response to Verizon's and Sprint-Florida's requests that it wished to continue with the Pricing Proceedings on the schedule that had already been set. On August 18, 2000, the Commission granted Verizon's and Sprint-Florida's requests, but indicated that it would go forward with the proceedings involving BellSouth. Order Granting Motions to Bifurcate and Suspend Proceedings, In re: Investigation into pricing of unbundled network elements, Docket No. 990649-TP, Order No. PSC-00-1486-PCO-TP (Fla. Pub. Serv. Comm'n Aug. 18, 2000).

39. Also on August 18, 2000, BellSouth submitted revisions to its cost studies in preparation for the next set of administrative hearings. The PSC conducted that second set of administrative hearings - addressing only issues related to BellSouth - in September and October 2000, and the parties filed post-hearing briefs on November 21, 2000.

40. On May 25, 2001, the PSC issued its Pricing Order. That order set recurring UNE rates, as well as rates for nonrecurring UNE charges and combinations, and designated a deaveraging methodology for BellSouth interconnection agreements. It relied on BellSouth's cost model and relied substantially on BellSouth's proposed inputs and assumptions into that model.

41. The PSC directed the parties to incorporate the rates established in the Pricing Proceedings into any new or existing interconnection agreements with BellSouth, which includes WorldCom's agreements with BellSouth. Pricing Order at 546-48.

42. On June 11, 2001, BellSouth filed a Motion for Reconsideration requesting that the PSC reconsider six

issues. On October 18, 2001, the PSC rejected all but one of BellSouth's requests; as to the remaining request, the PSC reversed its prior rejection of BellSouth's proposed inflation factor in calculating UNE rates. Order on Motions for Reconsideration and Motion to Conform Analysis, In re: Investigation into pricing of unbundled network elements, Docket No. 990649-TP, Order. No. PSC-01-2051-FOF-TP, at 4-19 (Fla. Pub. Serv. Comm'n Oct. 18, 2001) ("Reconsideration Order") (attached as Exhibit B).

43. Also on June 11, 2001, WorldCom - in conjunction with other competitor carriers (AT&T, Covad Communications Co. and Z-Tel Communications, Inc.) - moved for reconsideration as to several issues related to the UNE rates set by the PSC, including, but not limited to, BellSouth's use of three distinct scenarios for the calculation of UNE loop rates. The PSC rejected each of those claims. Id. at 19-31.

44. The new UNE rates set by the PSC in the Pricing Order, as amended by the Reconsideration Order, remain unlawfully high, do not comply with the Act and the FCC's

TELRIC regulations, and are not based on the evidence that was before the PSC.

COUNT ONE
(Violation of the 1996 Act and the Implementing FCC Orders, Rules and Regulations)
(UNE Rates)

45. WorldCom realleges herein the allegations in paragraphs 1 through 44 above.

46. Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the 1996 Act require that rates for interconnection and unbundled network elements be "just, reasonable, and nondiscriminatory" and "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and . . . may include a reasonable profit."

47. A long-run forward-looking cost method is necessary to satisfy the Act's requirement that rates be based on cost "without reference to" a rate-based, rate-of-return proceeding. A pricing methodology that uses "embedded" or historical costs violates the Act and FCC implementing regulations because it compensates the incumbent with a rate of return on its past investments. By

contrast, forward-looking costs approximate the results that would be obtained in a competitive market and therefore prevent incumbent local telephone companies from using interconnection and unbundled element pricing as a means of obstructing competitive entry into the local telecommunications market.

48. Thus, binding FCC regulations require UNE rates to be set pursuant to the FCC's long-run, forward-looking cost methodology, 47 C.F.R. §§ 51.501(a)-(b), 51.503, 51.505.[2]

49. During the Pricing Proceedings, BellSouth submitted, and the PSC relied on a cost model and provided inputs and assumptions that do not meet the Act's requirements and the FCC's regulations because, among other defects, they rely in part on BellSouth's embedded costs and other inflated, unjustified cost factors.

50. The UNE rates set by the PSC in the Pricing Order and incorporated into the interconnection agreements between WorldCom and BellSouth are unlawful in that they: i) are not based on TELRIC, as required by the FCC's binding

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2/ Count One does not rely on subsection 47 C.F.R., §51.505(b)(1).

regulations; ii) are not based on the cost of providing the element, as required by the Act; iii) are based on inputs and assumptions that reflect embedded costs, in violation of the Act and the FCC's regulations; iv) were arbitrarily and capriciously determined without regard for the evidence before the PSC; and v) are otherwise contrary to law.

51. WorldCom has been aggrieved by the Commission's pricing determinations as set forth above and is entitled to declaratory and other equitable relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT TWO
(Violation of the 1996 Act and the Implementing FCC Orders, Rules and Regulations)
(UNE Rates / Efficient Network Configuration)

52. WorldCom realleges herein the allegations in paragraphs 1 through 44 above.

53. Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the 1996 Act require that rates for interconnection and unbundled network elements be "just, reasonable, and nondiscriminatory" and "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network

element (whichever is applicable), and . . . may include a reasonable profit."

54. A long-run forward-looking cost method based on the use of the most efficient technology currently available and the lowest cost network configuration is necessary to satisfy the Act's requirement that rates be based on cost "without reference to" a rate-based, rate-of-return proceeding. A pricing methodology that uses existing technology or physical architecture employed by the incumbent carrier violates the Act because it compensates the incumbent with a rate of return on its past investments.

55. Thus, binding FCC regulations require UNE rates to be set based on the use of the most efficient technology currently available and the lowest cost network configuration, given the existing location of the incumbent local exchange carrier's wire centers. 47 C.F.R. § 51.505(b)(1).

56. The UNE rates set by the PSC in the Pricing Order and incorporated into the interconnection agreements between WorldCom and BellSouth are arbitrary and capricious and otherwise contrary to law because they are not based on the

use of the most efficient technology currently available and the lowest cost network configuration, given the existing location of BellSouth's wire centers, in violation of the Act and the FCC's implementing regulations.

57. WorldCom has been aggrieved by the Commission's pricing determinations as set forth above and is entitled to declaratory and other equitable relief pursuant to 28 U.S.C. §§ 2201, 2202 and 47 U.S.C. § 252(e)(6).

PRAYER FOR RELIEF

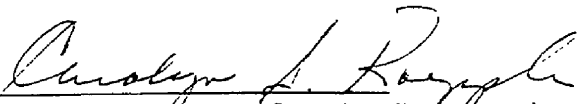
WHEREFORE, WorldCom requests that this Court grant it the following relief:

(a) That the Court declare that the Commission's UNE rate determinations from the Pricing Proceedings, for incorporation into the WorldCom-BellSouth interconnection agreements, violate the 1996 Act and the FCC's implementing orders and regulations;

(b) That the Court reform the PSC's UNE rate determinations, as incorporated into the interconnection agreements, or order the agreements' reformation consistent with the Act, the FCC's implementing orders and regulations, and the decision of this Court; and

(c) That the Court award WorldCom such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: November 19, 2001

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