BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Petition of MCImetro Access	)	Docket No. 050419-TP
Transmission Services, LLC for	)	
Arbitration of Interconnection	)	
Agreement with BellSouth	)	
Telecommunications, Inc.	)	
	)	

DIRECT TESTIMONY OF DENNIS L. RICCA

On Behalf Of

MCImetro Access Transmission Services LLC
(MCI)

OCTOBER 21, 2005

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I. INTRODUCTION

Q. Please state your name, your employer, your business address and on whose behalf you are offering this testimony.

A. My name is Dennis L. Ricca. I am employed by MCI, Inc. as a Senior Financial Analyst. My business address is 2655 Warrenville Road, Downers Grove, Illinois 60515.

Q. Briefly state your educational background.

A. I received a Masters of Science Degree in Mathematics from the University of Northern Iowa in 1979 and a Bachelor of Science Degree from Western Illinois University in 1972.

Q. Please state your previous work experience in the area of telecommunications.

A. I began working for Telecom*USA (then known as Teleconnect Company, and later as Teleconnect Long Distance Services and Systems Company) in August, 1983, as a Technical Training Coordinator. My responsibilities included developing a curriculum for and training new Customer Service Representatives and their technical support staff. Additionally, I was responsible for coordinating technical training programs for switch technicians, switch database personnel, and traffic engineers. I also coordinated management training seminars for the operations and engineering departments. By October of 1983, I spent almost one-half of my time analyzing the initial access tariffs filed by the

incumbent local exchange carriers ("ILECs") with the Federal Communications Commission ("FCC"). In December of 1984, I began working full time as a Regulatory Analyst. In August of 1986 I was promoted to Manager of Regulatory Affairs, and in August of 1988 I was promoted to Director of Regulatory Affairs for Telecom*USA. In August, 1990 the purchase of Telecom*USA by MCI Communications, Inc. was completed. I was transferred to MCI as a Senior Staff Member III in October, 1990. In October, 1994, I was promoted to a Senior Manager III. I started work as a consultant in March of 1999 and continued in that capacity until July, 2003. On August 4, 2003, I started in my current position at MCI in which I serve as an interface between the finance department and the negotiations teams, the regulatory department and the carrier access billing departments, particularly as it relates to the rates, terms and conditions for reciprocal compensation charges, switched access charges and network architecture related to those charges.

Q. Have you previously appeared before state regulatory commissions?

A. Yes, I have appeared before state public utility commissions in more than 130 cases. A complete list of cases with which I have been involved is appended to this testimony as Attachment DLR-1.

II. PURPOSE OF TESTIMONY

Q. What is the purpose of your testimony?

A. The purpose of this testimony is to address MCI's positions on those provisions of the interconnection agreement ("ICA") involving reciprocal compensation and network interconnection methods. I show that MCI's proposals for this interconnection agreement are consistently aligned with the Telecommunications Act of 1996 ("the Act"), the pro-competitive rules generated by the FCC in implementing the Act, the rules of this Commission and this Commission's previous rulings in various arbitrations while BellSouth's are not.

III. DISCUSSION:

A. Relative Use Factor ("RUF") for Interconnection Trunks

Issue No. 15, Interconnection Attachment 3

Statement of Issue: Should the parties pay each other for two-way interconnection facilities based on their proportionate share of originated traffic or on a 50-50 basis?

ICA Provision at Issue: Attachment 3, Section 4.10

Q. For two-way interconnection trunks, should the parties apportion costs by applying a "relative use factor"?

A. Yes. MCI has proposed a reasonable method, in accordance with FCC requirements, by which to allocate the shared costs of usage on two-way trunks by using a relative use factor ("RUF") – a factor that allocates the costs of interconnection trunks based upon the minutes each party uses those trunks. MCI's proposal is supported by and consistent with the Act. In First Report and

Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket 96-98, FCC 96-325 (released Aug. 8, 1996) at ¶ 1062 (the "*First Report and Order*"), the FCC found:

> *The amount an interconnection carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility.* For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic costs of those trunks. *The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction which the providing carrier owns and uses to send its own traffic to the interconnecting carrier,* Under an alternative scenario, if the providing carrier provides two-way trunks between its network and the interconnecting carrier's network, then the interconnecting carrier should not have to pay the providing carrier a rate that recovers the full cost of those trunks. These two-way trunks are used by the providing carrier to send terminating traffic to the interconnecting carrier. *Rather, the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send the terminating traffic to the providing carrier.*

First Report and Order, ¶ 1062, pp. 507, 508 (portions omitted, emphasis added). The FCC thus made clear that originating carriers must shoulder the burden of transporting the traffic originating on their network by their customers.

Clearly MCI's proposal to pay based on each party's use of shared trunks is the only proposal that is consistent with the FCC's *First Report and Order* cited above.

Q. How does MCI propose the RUF be applied?

A. MCI believes the RUF should be applied to all two-way interconnection trunks beginning from the interconnection point ("IP") and continuing to the top of the terminating Party's network.

Q. What do you mean by "the top of the terminating party's network?"

A. By the top of BellSouth's network, I mean to BellSouth's tandem office serving the BellSouth customer. For traffic delivered to the top of MCI's network, I mean the MCI switch or designated switching point in the LATA. Perhaps the easiest way to understand MCI's proposal is to begin with an example of one-way trunking under the original interconnection agreement. For traffic originated by BellSouth's customers terminating on one-way trunks to MCI, BellSouth paid for those trunks. Similarly, for traffic originated by MCI's customers terminating on one-way trunks to BellSouth, MCI paid for those trunks. Each party paid for the trunks it used to terminate traffic to the other. And because the trunk groups were sized to accommodate the traffic sent to the terminating carrier, each party's cost responsibility for the interconnection trunks was based on the party's "relative use." MCI's proposed language accomplishes precisely the same result when applied to two-way trunks, and ensures that neither party bears a disproportionate share of the costs to exchange traffic under this Agreement.

Q. Should each party be financially responsible for the interconnection facilities on its side of the IP?

A. Yes, each party should be financially responsible for the facilities on its side of the IP consistent with the agreed-upon language of Section 3.2.1 of Attachment 3 which states: "Each Party is responsible for providing, engineering and maintaining the network on its side of the IP." The key to this answer lies in the distinction between facilities and trunks. It is the trunking costs for which the FCC mandates a RUF.

Q. What is BellSouth's position on the application of a RUF?

A. BellSouth's position in the Decision Point List ("DPL") indicates that BellSouth has no ability to proportionally bill on a mechanized and monthly basis. It further proposes that the fifty percent RUF that it does propose be applied to recurring and non-recurring rates for dedicated DS1 facilities. I disagree with BellSouth's proposal.

Q. What parts of BellSouth's proposal concern you?

A. BellSouth proposes to bill both recurring and non-recurring dedicated facility charges to MCI. This proposal should not negate MCI's and BellSouth's requirements to be financially responsible for the *facilities* on their respective sides of the IP. The interconnection facilities are usually provisioned at a DS-3 level or higher. Each party is financially responsible for this *facility* on its side of the IP. Logical trunk groups on that facility, however, are generally

provisioned at a DS1 level. So I agree with BellSouth's use of the DS1 as the correct unit to use to apportion the cost with the RUF. The matter may be clarified by both parties agreeing to this distinction between trunks and facilities. If facilities are understood as the media which carry DS1-trunks, then it seems that two simple changes of the word "facilities" to the word "trunks" in MCI's proposed language will narrow this issue for both parties. Therefore, I propose to change MCI's proposed language in Section 4.10 in the following manner:

> ***... each Party shall pay its proportionate share of the nonrecurring and recurring charges for interconnection ~~facilities~~ DS1 trunks based on the percentage of the facilities used by that Party. Each Party shall pay its proportionate share of the nonrecurring charges for new and augmented ~~facilities~~ trunks based on...***

Q. How does this change MCI's proposed application of the RUF?

A. These two changes are not intended to change MCI's application of the RUF, only to clarify it. I was using the terms "facilities" and "trunks" interchangeably when this language was discussed and proposed. That use, however, has caused confusion elsewhere, and is the reason for my modification. I would continue to propose that each party is responsible for the facilities on its side of the IP, consistent with the agreed-upon language in Section 3.2.1 of Attachment 3 cited above. Thus, if the interconnection facilities are fiber optic trunks, each party is responsible for the facilities (the fiber) and the electronics that determine the total bandwidth available across those facilities. If this bandwidth requires

expansion, then each party is responsible for the expanded electronics on its end of the fiber. When trunks are established, however, each party should be responsible for the apportionment of the bandwidth that is required to establish the trunks, including the electronics and multiplexing. Neither party should charge the other non-recurring charges for this partitioning of bandwidth. Only charges for the establishment of trunks on its side of the IP should be assessed against the other party, and those charges should be subject to the RUF.

The other concern with BellSouth's proposed language is that it seems to contemplate (though it is not clear) that BellSouth would use its special access rates to levy the charges for the DS1 trunks. That is not a reasonable reading of the *First Report and Order*, which calls for rates based on forward-looking economic costs. (See First Report and Order ¶ 1062 (quoted in part above).) There is no way for BellSouth to claim that its special access rates are based on forward-looking economic costs. BellSouth's special access rates are significantly higher than the TELRIC-based rates determined for BellSouth's DS1 facilities.

Q. What does MCI propose to address these concerns?

A. To address the mechanized monthly billing concern, MCI proposes that the parties use traffic ratios based on their usage for the previous six months. Any significant changes will be reflected in the billing for the subsequent six-months.

This level of billing accuracy obviates the need for a billing true-up and allows the parties' billing platforms certainty in correctly addressing the RUF.

Q. What should be done for trunk augments or new trunk groups?

A. Charges for augments to existing trunk groups should be subject to the RUF for that trunk group. For trunk groups that carry traffic not previously exchanged between BellSouth and MCI (i.e., new trunk groups), the RUF should, as MCI previously proposed, be based upon the forecasts of relative usage. Direct end-office trunks ("DEOTs") that are added in order to relieve congestion on a tandem switch should be considered augments to the tandem trunk group that the traffic previously traversed. The existing RUF for the tandem trunk group should be used for any new DEOT trunk group. This would hold even if the DEOTs in question were the first such DEOTs in the new trunk group.

Putting all of the compromise and clarifying changes together with MCI's language and agreed-upon language, Section 4.10 of Attachment 3 would read as follows:

> 4.10 For two-way trunk groups that carry both Parties' Local Traffic, IP/PSTN traffic, PSTN/IP/PSTN traffic, and ISP-bound Traffic only, each Party shall pay its proportionate share of the nonrecurring and recurring charges for interconnection ~~facilities~~ trunks based on the percentage of the facilities used by that Party in the previous six months. Each Party shall pay its proportionate share of the nonrecurring charges for new and augmented ~~facilities~~ trunks based on the previous six months of use of the existing facilities, or the joint forecasts for the circuits required by each Party for new trunk groups. Semiannually either Party can request a joint review of traffic statistics for the previous six

(6) months on a per trunk group basis. Either Party can request a billing adjustment of the previous split to reflect the proportionate level of traffic. MCI shall be responsible for ordering and paying for any two-way trunks carrying Transit Traffic. Each Party shall be responsible for ordering and paying for facilities used for two-way trunk groups it utilizes unidirectionally.

The strike-through above indicates the language deleted from MCI's proposal in Section 4.10 previously provided to the Commission in the initial filing. The double-underlining indicates language added. These changes are meant as clarification or as compromise positions that address BellSouth concerns.

Q. Why do you believe the FCC's First Report and Order at paragraph 1062 is consistent with MCI's position here?

A. If the excerpts from the FCC's paragraph 1062 from its *First Report and Order* that I provide above are examined in even a cursory manner, the word "trunk(s)" appears seven times. It is clear that paragraph 1062 directs the apportionment of trunk costs and not facilities costs. "Facilities" come into play to determine the "providing carrier," which is the carrier providing the facilities.

Q. You have addressed the distinctions between trunks and facilities above. Are there any other distinctions the Commission should consider when implementing the RUF?

A. Yes, there is one. When I refer to the word "trunk," I mean the bandwidth on the facilities that constitute telecommunication paths. I do not mean trunk ports on a switch nor do I mean any multiplexing equipment necessary to establish the

DS-1 trunks. Neither the trunk ports nor the multiplexing equipment should be considered subject to the RUF I propose here.

Q. Are there any other reasons that you believe that MCI's position on the RUF is appropriate?

A. Yes. In its 2001 arbitration order the North Carolina Commission followed BellSouth's suggestion to impose on MCI the incremental cost of facilities to deliver a call from the edge of an exchange to a IP that was located outside of the local exchange from which the call was being made. The issue ultimately was appealed to the United States Court of Appeals for the Fourth Circuit, which ruled in MCI's favor, stating as follows:

> MCIm argues that this provision in the interconnection agreement is contrary to federal law. MCIm points specifically to FCC Rule 51.703(b), one of the several rules comprising the FCC's regime governing reciprocal compensation for the transport and termination of telecommunications traffic as required by 47 U.S.C.A. § 251(b)(5). *See* 47 C.F.R. § § 51.701-51.717. Rule 703(b) states, "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). Because BellSouth's cost-shifting provision is an assessment of charges for traffic that originates on BellSouth's own network, MCIm argues, the provision is contrary to Rule 703(b) and thus is illegal. Moreover, MCIm notes, the Wireline Communications Bureau (the Wireline Bureau), a subdivision of the FCC, in a case concerning interconnection in Virginia, has rejected a similar cost-shifting provision as being discordant with Rule 703(b). *See In re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., and for*

Expedited Arbitration, 17 F.C.C.R. 27039 (2002) [*14] (*Virginia Arbitration Order*).[1]

* * * * * * *

> In sum, we are left with an unambiguous rule, the legality of which is unchallenged, that prohibits the charge that BellSouth seeks to impose. Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions. Although we find some surface appeal in BellSouth's suggestion that the charge here is not reciprocal compensation, but rather the permissible shifting of costs attending interconnection, the FCC, as noted above, has endorsed cost-shifting related to interconnection only as it relates to the one-time costs of physical linkage, and in doing so, expressly declined the invitation to extend [*25] the definition of "interconnection" to include the transport and termination of traffic. *See Local Competition Order*, 11 F.C.C.R. at 15588-89 P 176. Furthermore, the FCC recognized that such a broad interpretation of the concept of interconnection would interfere with its reciprocal compensation regulations: "Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish 'reciprocal compensation arrangements for the transport and termination of telecommunications,' under section 251(b)(5)." *Id.* As a consequence, the FCC's rules cannot fairly be interpreted in the manner necessary to allow the limited construction of Rule 703(b) that BellSouth seeks.[2]

MCI's position here mirrors the position it took before the Fourth Circuit – there can be no origination charges to carry a call to the IP assessed by the originating carrier on the terminating carrier. This is the very issue the FCC addressed at ¶ 1062 of the *First Report and Order*. BellSouth's proposal is

[1] MCI*metro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc. and North Carolina Utilities Commission* (USNC 4th Cir.), Case No. 03-1238, slip op. (December 18, 2003) at 8.

[2] *Id.* at 13.

flatly inconsistent with the findings of the Fourth Circuit and the FCC's *First Report and Order.*

Q. How should the Commission decide the RUF Issue?

A. The Commission should adopt MCI's proposed language as modified above. The Commission should reject BellSouth's proposal for an initial 50-50 RUF and its proposal to use special access rates for charges for interconnection trunks.

B. Interconnection Facilities and Functions at TELRIC

Issue 24 – Interconnection (Attachment 3)

Statement of Issue: How will SS7 charges be imposed on the parties?

ICA Provision at Issue: Attachment 3, Section 7.8.1

7.8.1 Compensation for 8XX Traffic. When a Party's End User places an 8XX call, the other Party shall charge the originating switched access and data query charges set forth in that Party's respective intrastate or interstate switched access tariffs to the IXC that is responsible for terminating the 8XX to the appropriate Wide Area Telecommunications Service (WATS) or Plain Old Telephone Service (POTS) number. **The End User's Party will be responsible for any applicable Common Channel Signaling (SS7) charges.**[3]

Q. Is it reasonable for BellSouth or MCI to impose SS7 signaling charges on the other party?

[3] In this testimony I use the same convention when citing competing ICA language as is use in the ICA provided to the Commission. **Bold underlined** language is proposed by BellSouth and opposed by MCI while ***bold italic*** language is proposed by MCI and opposed by BellSouth.

A. Under most interconnection circumstances, no, it is not reasonable to impose charges on the other for SS7. Additionally, it is not at all clear when these charges would be imposed, what these charges are and how they would be billed. In its position statement, BellSouth states that it will levy the SS7 charges from either its intrastate or interstate tariff. Even this statement sheds no light as to when such charges will be levied and which specific tariffs in which these charges might be found. MCI cannot agree to such unspecified charges with the application of the charges left to BellSouth's discretion.

C. Jurisdictional and vFX Issues

Issue 17A – Interconnection (Attachment 3)

Statement of Issue: To what extent should the definition of local traffic allow for the origination and termination of traffic in two different LATAs?

ICA Provision at Issue: Attachment 3, Section 7.1

7.1. "Local Traffic" is defined as any telephone call that originates in one exchange **within a LATA** and terminates **within the same LATA** in either the same exchange, or some other local calling area associated with the originating exchange ***on a non-optional basis*** **as set forth in the originating Party's tariff**, ***based on originating and terminating NPA/NXXs, without regard to the actual physical locations of the originating and terminating parties***. Local Traffic also includes other types of traffic determined to be Local Traffic by the Commission.

Q. What is MCI's position on Issue 17A? Should local traffic be required to be in the same LATA?

A. No. There is no reason to require that local calling areas not cross LATA boundaries. In fact, based upon the exact same logic as used by BellSouth to

include optional EAS traffic as local, MCI could assert that all United States domestic calls – both intrastate and interstate – all such calls are local.

Q. How is it that all intra-U.S. calls for MCI should be considered local?

A. MCI's Neighborhood product provides for a flat-rated calling area across the United States. In the same manner that BellSouth has for the last eight years considered optional EAS calls to be local, that same logic applies to MCI's Neighborhood calls.

Issue 17B – Interconnection (Attachment 3)

Statement of Issue: Should traffic be jurisdictionalized based on the actual physical location of the calling and called parties, or based on the originating and terminating NPA/NXXs?

ICA Provision at Issue: Attachment 3, Section 7.1

7.1. "Local Traffic" is defined as any telephone call that originates in one exchange **within a LATA** and terminates **within the same LATA** in either the same exchange, or some other local calling area associated with the originating exchange ***on a non-optional basis*** **as set forth in the originating Party's tariff**, ***based on originating and terminating NPA/NXXs, without regard to the actual physical locations of the originating and terminating parties***. Local Traffic also includes other types of traffic determined to be Local Traffic by the Commission.

Issue 22 – Interconnection (Attachment 3)

Statement of Issue: (A) How should FX-like or vNXX services offered by MCI to its customers be treated for intercarrier compensation purposes? If this traffic is not local, how should it be identified and what rates apply?

ICA Provision at Issue: Attachment 3, Section 7.5.4 and 7.5.5

7.5.4 ... The appropriate charges will be ***rated based upon NPA-NXX of calling and called Party*** determined by the routing of the call. ...

7.5.5 ***If MCI assigns NPA/NXXs to specific BellSouth rate centers within the LATA and assigns numbers from those NPA/NXXs to MCI End Users physically located outside of that LATA, BellSouth traffic originating from within the LATA where the NPA/NXXs are assigned and delivered to a MCI customer physically located outside of such LATA, shall be deemed Local Traffic.*** **[BellSouth competing language not shown]**

Q. Should the determination of the jurisdiction of calls for purposes of intercarrier compensation differ from the determination of jurisdiction of calls used to determine end user billing?

A. No, it should not. In both instances, the jurisdiction of calls transmitted within the traditional public switched telephone network ("PSTN") has been based on the rate center of the originating NPA-NXX and the rate center of the terminating NPA-NXX There simply is no valid reason to deviate from this approach. On the other hand, BellSouth's proposal defines the jurisdiction of a call based on the physical location of the parties and requires different inter-carrier compensation if the physical location of the customers is outside the local calling area. There is no sound economic or public policy reason to charge different compensation rates for different jurisdictional minutes (e.g. interstate switched access versus intrastate switched access versus local reciprocal compensation), let alone minutes in the same jurisdiction as is the case here. Furthermore, BellSouth's proposal to charge different rates for calls within the same jurisdiction is not supportable by the facts.

The reasoning underlying the reciprocal compensation found in the Act is simple and straight-forward: the customer originating the local telephone call pays for that call, at his or her local rates, to the local exchange carrier ("LEC") serving that customer. Because the LEC serving the called party – the terminating carrier – would receive no compensation for carrying that call to its customer, the Act requires the originating carrier to compensate the terminating carrier. Correspondingly, the Act goes on to forbid the originating carrier from charging the terminating carrier for the cost of transporting a call to the interconnection point between the two carriers.

That principle does not change when the call is rated by its area code and prefix – the NPA and NXX. Neither does it change if the physical location of the called party is outside of the local calling area in which the NPA-NXX is assigned by the industry. In this latter scenario, any additional costs are on the terminating carrier, not the originating carrier. Thus, the obligations on the originating carrier do not change.

As I previously stated, the industry standard that has consistently been used has been to determine the jurisdiction of a call by the rating points of the calling and called NPA/NXXs.[4] Requiring any other mechanism for

[4] **See** *In re Petition of WorldCom, Inc.*, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau July 17, 2002) ("*Virginia Arbitration Order*"), *applications for review pending,* CC Docket No. 00-218, Memorandum Opinion and Order, released July 17, 2002 (DA 02-1731), ¶ 301. "Verizon concedes that NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide."

determining the jurisdiction of traditional local calls for so-called virtual FX calls would create havoc in the industry and unduly advantage the established ILEC. There is no logical reason for determining a separate jurisdiction or classification for the call other than that used to determine the jurisdiction of the call for the purpose of determining how the end-user customer is charged for the call.

Q. Are there situations in which neither the actual physical location of the end user nor the rating points of the calling and called NPA-NXX will be used to determine jurisdiction?

A. Yes, the FCC has determined that the end-point analysis of calls makes little sense when the call in question is Voice over Internet Protocol ("VoIP"). This is discussed in more detail below.

Q. Do the FCC's rules or any of its decisions address the vFX issue?

A. Yes. The Commission should look to the literal language used by the FCC and the related pronouncements of the FCC as the best interpreter of its own rules and orders. In the Virginia Arbitration Order,[5] the FCC interpreted its ISP reciprocal compensation rules to apply to ISP traffic that would be classified by BellSouth's definitions as vFX ISP traffic.

Q. Is MCI's definition of local calls consistent with the FCC's rules?

[5] *In re Petition of WorldCom, Inc.*, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau July 17, 2002) ("*Virginia Arbitration Order*"), *applications for review pending*.

A. Absolutely. MCI's position is consistent with the FCC's definition of local, especially given the FCC's own interpretation of its own rules in the Virginia Arbitration cited above. BellSouth's use of "physical endpoints" as the basis for the jurisdiction of a call is without support in those same FCC rules.

Q. Have other state commissions previously addressed this vFX issue?

A. Yes, many have. In its Declaratory Order in Docket No. 28906, the Alabama Public Service Commission found that for ISP-Bound FX and VNXXX calls:

> ... by virtue of the determinations reached by the FCC in its *ISP Remand Order,* ISP-Bound FX and VNXX calls are predominantly considered jurisdictionally interstate and subject to the authority of the FCC. This Commission accordingly has no authority to render determinations regarding the ISP-Bound FX/VNXX traffic referenced in this proceeding.[6]

In D99-09-029, the California Public Utilities Commission instituted a rulemaking and initiated an investigation into the rating and routing of vFX calls. In its interim order, the Commission correctly concluded that:

1) The use of disparate rating and routing points/vNXX/FX type service is valid, efficient and innovative service. (D99-09-029, pages 14-17, Conclusion of Law ¶ 1.)
2) Rating of calls is based on the rate center of the NPA/NXX, not the customer location. (*Id.,* pages 21-28, Conclusion of Law ¶ 2.)
3) The application of switched access rates by the originating party is inappropriate and designated the issue of the appropriate compensation scheme for the originating party to its investigation. (*Id.,* pages 32-37, Conclusion of Law ¶ 9.)

[6] Declaratory Order of the Alabama Public Service Commission, Docket No. 28906, April 29, 2004, p. 30.

In the follow-up arbitration on this issue, the California Commission confirmed that the local compensation rules apply to vFX traffic[7] and confirmed those decisions in the MCIm/SBC California arbitration in 2000.[8]

The Commission should use the decision of the FCC in the Virginia Verizon Arbitration in tandem with the ISP Remand Order to guide its decision on the ISP-Bound FX and VNXXX traffic. That is, the Commission should determine that all ISP traffic, whether VNXXX or not, is subject to the FCC ordered ISP-remand rate of $0.0007 per minute.

Further, the Commission should reaffirm its decision to regard all non-ISP-Bound VNXXX traffic as local. The Commission may wish to reconsider its reasons for determining that the appropriate reciprocal compensation rate is bill and keep.

Q. Why should the Commission reconsider bill and keep as the appropriate compensation level for this traffic?

A. The minutes that are classified as local should be subject to the local reciprocal compensation rate. In essence, a minute is a minute is a minute. It is unlikely that the ILECs previously billed each other for EAS traffic either, but that traffic is still considered as local and subject to the TELRIC reciprocal compensation

[7]California Public Utilities Commission, D. 02-06-076, June 27, 2002, pages 7-8.

[8] California Public Utilities Commission, A.00-01-022, Final Arbitrator's Report, Issue 239, (June 13, 2000), approved in D. 00-08-011.

rates pursuant to the Telecommunications Act of 1996 and as ordered by this Commission.

Q. Has this Commission previously addressed this vFX issue?

A. Yes, it has. In PSC-02-1248-FOF-TP, the FPSC accurately describes VNXX:

> A virtual NXX is the practice of assigning NPA/NXXs to end users physically located outside of the rate center to which the NPA/NXX is homed. This is done in order to give virtual NXX customers a local dialing presence in rate centers other than the rate center in which they are physically located. In other words, end users located in a particular rate center can dial a NPA/NXX that is local to them, but it in fact connects them to a virtual NXX customer physically located outside of the rate center traditionally associated with that NPA/NXX.

In spite of the ILECs' protests, the Commission determined the following about VNXX:

> We believe that virtual NXX is a competitive response to FX service, which has been offered in the market by ILECs for years. Differing network architectures necessitate differing methods of providing this service; nevertheless, we believe that virtual NXX and FX service are similar "toll substitute services." Therefore, we believe carriers should be permitted to assign NPA/NXXs in a manner that enables them to provision these competitive services. However, we believe the practice of assigning NPA/NXXs to customers outside of the rate centers to which they are homed raises additional issues that must be addressed.

The Commission correctly identified intercarrier compensation as the key issue:

> ...we believe the primary point of controversy is determining the proper jurisdiction of virtual NXX/FX traffic for the purposes of intercarrier compensation.

* * * * *

> We find that carriers shall be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, we find that intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. We find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes.

Q. How should this Commission decide the entire vFX issue?

A. The Commission should mandate that intercarrier compensation for calls should be based on the same jurisdiction as is used to determine the jurisdiction of those same calls for end-user charges. Consistent with the Virginia Verizon Arbitration decision cited above, as well as its previous decisions on the determination of jurisdiction for vFX calls, it can do so by ordering the use of the LERG rating points of the calling and called NPA-NXXs to determine call

jurisdiction for the purpose of intercarrier compensation, whether those calls are considered ISP or local voice, intrastate toll or interstate toll.

The Commission should require that for purposes of intercarrier compensation, the same jurisdiction that is used to rate end-user calls is used to determine the jurisdiction and resulting intercarrier compensation – the jurisdiction determined by the rating points of the calling and called NPA-NXX. This provides an elegant solution to a number of issues in this docket, imposes no additional costs on any party, and is completely consistent with the FCC's and this Commission's rules.

Issue 17C – Interconnection (Attachment 3)

Statement of Issue: Should local traffic include optional extended calling plans as set forth in the originating party's tariff, or only non-optional extended calling plans (such as EAS)?

ICA Provision at Issue: Attachment 3, Section 7.1

7.1. "Local Traffic" is defined as any telephone call that originates in one exchange **within a LATA** and terminates **within the same LATA** in either the same exchange, or some other local calling area associated with the originating exchange ***on a non-optional basis*** **as set forth in the originating Party's tariff**, ***based on originating and terminating NPA/NXXs, without regard to the actual physical locations of the originating and terminating parties***. Local Traffic also includes other types of traffic determined to be Local Traffic by the Commission.

Q. Should optional extended calling service ("ECS") traffic be treated as exchange access traffic subject to the meet point billing intrastate access rates set forth in each party's respective tariffs?

A. Yes, it should. Instead of treating this traffic as toll traffic subject to switched

access charges, BellSouth proposes to require that this traffic be treated as local service to be subject to local reciprocal compensation rates. It appears that BellSouth's only reason for doing so is that it wishes to limit what it pays to MCI for switched access charges. While this is a reasonable concern for BellSouth, it asks this Commission to make an arbitrary distinction between BellSouth's toll traffic and other interexchange carriers' toll traffic.

Optional ECS is simply another name for toll traffic. When exchanged between local exchange carriers, toll traffic is subject to the tariffed intrastate access rates. There is absolutely no reason to classify this traffic as anything else.

Q. What is extended area service?

A. Extended area service is used to bring two different exchanges into the same local calling area. It evolved as a way to provide what would otherwise be very expensive per-minute toll service as part of the local service that customers purchase in each exchange. Regulators often allowed the formation of an EAS area based upon a "revenue neutral" shift of revenues from per-minute toll rates to mandatory per-line monthly local rates on users in each exchange. As such, the charges on customer bills appeared as local service charges.

More recently, BellSouth has offered "Optional ECS" to its customers. Calling the service Extended Calling Service (ECS), it was described as a long-distance toll call pricing plan. Optional ECS does ***not*** operate to shift revenues

in the same manner that traditional EAS does. To differentiate between traditional EAS and optional ECS, I will refer to traditional EAS as "mandatory" EAS. It is mandatory in the sense that there is no choice on the part of all customers. It comes with BellSouth's standard local service offering. Optional ECS does not. This distinction is critical to understanding why optional ECS should be treated differently from traditional EAS for intercarrier compensation purposes.

Q. But isn't EAS traffic traditionally considered "local?"

A. Only ***mandatory*** EAS traffic has traditionally and typically been treated as local. Optional ECS is not the same. To understand this distinction, it is necessary to look at the manner in which BellSouth treats traffic originated by its end users in an optional ECS scenario.

When a BellSouth customer who does not purchase optional ECS makes a call into the optional ECS area, that customer is charged for a toll call. For an BellSouth customer who does subscribe to BellSouth's optional ECS package, that customer pays a flat-rated surcharge per month in addition to that customer's charges for "local" service, to be able to incur no per-call charges on calls made to the optional ECS calling area. This is simply an example of the customer paying flat-rated toll charges for the limited optional ECS area. It is clearly not part of the local charge that BellSouth assesses all of its local

customers. This necessarily means that BellSouth realizes a windfall for every optional ECS call that terminates to an MCI customer if these calls are rated at anything other than access for intercarrier compensation purposes.

Q. How would BellSouth realize a windfall in the event that it is required to pay MCI for terminating optional ECS calls at anything other than switched access rate levels?

A. When a BellSouth customer who does not subscribe to the optional ECS service offered by BellSouth makes a call to an MCI subscriber in the *mandatory* local calling area, BellSouth remits a reciprocal compensation charge to MCI. The customer is charged for this call under the BellSouth local service charges. Under the principle of matching intercarrier compensation to originating end-user charges, this is the proper result -- BellSouth gets local revenue and compensates MCI at cost-based reciprocal compensation rates.

When that same BellSouth customer calls an MCI customer location in the optional ECS calling area, BellSouth charges the customer toll rates. As such, intercarrier compensation for this call should not be governed by the reciprocal compensation rate structure, but rather the interexchange switched access rates. BellSouth does not propose to pay MCI for switched access meet point charges, however, despite the clear classification of this call as toll for purposes of generating revenue for BellSouth. Instead it proposes to pay MCI at

the reciprocal compensation level, which is much lower. This arbitrage results in a huge windfall for BellSouth when the total minutes terminated are rated at the lower reciprocal compensation rates instead of switched access rates.

Similarly, when a BellSouth customer who does subscribe to the optional ECS service offered by BellSouth makes a call to an MCI subscriber in the mandatory local calling area, BellSouth again remits only a reciprocal compensation charge to MCI. BellSouth charges the customer for this call under the BellSouth local service charges. Again, this is the correct result, since BellSouth has only received revenue from the end-user through local rates.

However, when that same BellSouth customer calls an MCI customer located in the optional ECS calling area, the customer pays BellSouth the additional ECS monthly rate to cover the cost of the call. Nevertheless, BellSouth still pays MCI only reciprocal compensation charges even though it has received incremental revenue from its end-user for the call. It does not propose paying for switched access meet point charges despite the fact that it has collected incremental revenue – just as it does for all intraLATA toll calls – for this type of call. Again, this arbitrage results in a huge windfall when the total minutes terminated are rated at the lower reciprocal compensation rates instead of switched access rates. This arbitrage results from the mismatch between how BellSouth charges its end-user for an optional ECS call, and how MCI is compensated for terminating that call to MCI's customers.

Q. But wouldn't the fact that optional ECS is charged on a flat-rate per call basis (regardless of duration) make it look like a local service add-on instead of a toll charge?

A. Not at all. Every major telecommunications provider of whom I am aware today offers some form of unlimited toll calling. This does not change the classification of that traffic to local for compensation purposes. If the Commission decides to require the classification of BellSouth's ECS traffic as local for compensation purposes based upon flat-rated charges for unlimited calling, then it should also immediately lower intrastate switched access rates to the reciprocal compensation level because MCI offers many of its customers unlimited statewide calling for a flat-rated monthly charge.

Q. Are you advocating that the Commission make such a change in this proceeding?

A. Yes, I am, if the Commission decides it has the record before it to allow BellSouth to pay MCI only reciprocal compensation rates for its ECS terminations, then the Commission should likewise, based upon my testimony, allow MCI to pay reciprocal compensation for telephone calls made by its local subscribers to any location in the state.. I advocate the Commission reach such a far-reaching result only if it declares BellSouth terminations of its customers' ECS calls at reciprocal compensation rates. In this proceeding the Commission

can simply classify optional ECS traffic properly as toll, subject to switched access charges and meet point billing charges just as all other toll traffic is or classify all intrastate traffic terminated over the interconnection facilities to be local and subject to the reciprocal compensation rate.

D. VoIP Issues

Issue 18 – Interconnection (Attachment 3)

Statement of Issue: Should IP/PSTN and PSTN/IP/PSTN traffic be excluded from the definition of intraLATA traffic?

ICA Provision at Issue: Attachment 3, Sections 7.2 and 7.5.1

Issue 19 – Interconnection (Attachment 3)

Statement of Issue: What intercarrier compensation regime should be used for IP/PSTN and PSTN/IP/PSTN traffic?

ICA Provision at Issue: Attachment 3, Section 7.5.1

Issue 23 – Interconnection (Attachment 3)

Statement of Issue: How should IP/PSTN and PSTN/IP/PSTN traffic be categorized for purposes of determining compensation for interconnection facilities and termination of traffic?

ICA Provision at Issue: Attachment 3, Sections 7.6.3, 7.6.4, 7.6.5 and 7.7
MCI Factors Guide, Sections 1.1.4, 2.2.2, 2.6.1, 2.7 and 2.7.1

7.2. "IntraLATA Toll Traffic" is defined as all traffic that originates and terminates within a single LATA that is not Local, Transit, ***IP/PSTN traffic and PSTN/IP/PSTN*** or ISP-bound traffic under this Attachment.

7.5.1 ***The Parties shall compensate each other for the exchange of IP/PSTN traffic and PSTN/IP/PSTN Traffic applying the same rate elements used by the Parties for the exchange of ISP-bound traffic whose dialing patterns would otherwise indicate the traffic is local traffic. This compensation regime for IP/PSTN and PSTN/IP/PSTN Traffic shall apply regardless of the locations of the calling and called parties, and regardless of the originating and terminating NPA/NXXs.***

7.6.3 Percent Local Facility. Each Party shall report to the other a Percent Local Facility (PLF) factor. The application of the PLF factor will determine the portion of switched dedicated transport to be billed per the rates set forth in Exhibit A to this Attachment. The PLF factor shall be applied to Multiplexing, Local Channel and Interoffice Channel Switched Dedicated Transport utilized in the provision of Switched Dedicated Transport. Each Party shall update its PLF factor on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than thirty (30) days after the first of each such month to be effective the first bill period the following month, respectively. If the PLF factor is not timely updated, the previously reported PLF factor will be used. Requirements associated with PLF factor calculation and reporting shall be as set forth in Exhibit xx to this Attachment. For purposes of the PLF factor calculation, the following traffic types shall be included: Exchange Access Traffic originated by or terminated to a 3rd party IXC (including an MCI affiliate with a separate ACNA); Local Traffic; ISP-Bound Traffic; ***IP/PSTN Traffic; PSTN/IP/PSTN Traffic.***

7.6.4 ***In addition to other jurisdictional factors the Parties may report to one another under this Agreement, the Parties shall report a Percent Enhanced Usage ("PEU") factor on a statewide basis or as otherwise determined by MCI at its sole discretion. The numerator of the PEU factor shall be the number of minutes of IP/PSTN Traffic and PSTN/IP/PSTN traffic sent to the other Party for termination to such other Party's customers. The denominator of the PEU factor shall be the total combined number of minutes of traffic, including IP/PSTN Traffic and PSTN/IP/PSTN traffic, sent over the same trunks as IP/PSTN Traffic and PSTN/IP/PSTN traffic. Either Party may audit the other Party's PEU factors pursuant to the audit provisions of this Agreement. Requirements associated with PEU factor calculation and reporting shall be as set forth in Exhibit xx to this Attachment.***

7.65 Notwithstanding the provisions regarding the calculation of PLU and PIU above, where the terminating Party has message recording

technology that identifies the jurisdiction of traffic terminated, utilizing originating and terminating NPA/NXXs, as defined in this Agreement, such information shall, at the terminating Party's option, be utilized to determine the appropriate jurisdictional reporting factors (the PLU & PIU) but not the ***PEU or*** PLF, in lieu of those provided by the originating Party. ...

7.7 ... BellSouth and MCI shall retain records of call detail for a minimum of twelve months from which the PLU, PLF, ***PEU*** and/or PIU jurisdictionalization can be ascertained. ... The PLU, PLF, ***PEU*** and/or PIU shall be adjusted based upon the audit results and shall apply to the period of time for which the audit was completed. If, as a result of an audit, either Party is found to have overstated the PLU, PLF, ***PEU*** and/or PIU, or to have incorrectly jurisdictionalized traffic (in the case of the billing party) by twenty percentage points (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit.

Q. What is the dispute for these three issues?

A. The dispute is whether the Agreement should include terms, conditions, and rates for a type of traffic – often referred to broadly as Voice over Internet Protocol, or VoIP traffic – that is a type of enhanced or information service traffic, and so under FCC rules may be exchanged through local interconnections and exchanged at local interconnection charges. Unlike the use of the term "IP" under previous issues to refer to the interconnection point between BellSouth and MCI, in the context of this VoIP portion of the testimony, I will use the term "IP" to refer to internet protocol – the packetized standard for transmissions over the Internet.

Q. Are you referring to "IP in the middle" VoIP traffic, such as discussed in the AT&T petition ruled on by the FCC in 2004?

A. No. To be clear, when I use the phrase "IP/PSTN Traffic," I am referring to IP-enabled traffic which includes a voice application, but also is accomplished with a net protocol conversion, which, among other things, is a key characteristic of an information or enhanced service. In my discussion, I am not referring to what is referred to in the AT&T FCC petition as "IP in the middle" traffic, which in contrast is both originated and terminated using the time division multiplexing ("TDM") protocol historically used by ILECs to transmit traffic over the public switched telephone network, or PSTN.[9]

Q. The issue statements 18, 19 and 23 all have the term "PSTN/IP/PSTN" listed as a traffic type that MCI wishes to exclude from access charge rates. Isn't that the term that the various parties to the AT&T FCC petition used to refer to "IP in the middle?"

A. Yes, that is the way some parties referred to "IP in the middle." That is not, however, the meaning of that phrase in the ICA. Section 2.19 of Attachment 3 states that "PSTN/IP/PSTN Traffic is a subset of IP Enabled Services that is not IP/PSTN Traffic and that features-enhanced services that provide customers a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information." I am not challenging this definition, I simply point the Commission to it and caution the Commission not

[9] *See, In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are exempt from Access Charges*, Order in WC Docket No. 02-361, released April 21, 2004 (FCC 04-97), ¶ 1.

to be confused by its use as I was when reading these Issue Statements. I will use "PSTN/IP/PSTN" as it is defined in the ICA.

Q. To further introduce your discussion, would you please explain what you mean by Voice over Internet Protocol, or "VoIP" traffic?

A. Yes. Briefly, VoIP offerings use the same network protocol as other Internet traffic. Unlike the traditional circuit-switched, TDM network architecture that was used for voice communications for over a half-century, Internet Protocol relies on the transmission of data packets to carry (packetized) voice communications. Because voice data packets can be dispersed during transmission among other types of Internet traffic, such as e-mail messages, web pages, Instant Messaging conversations, music downloads from iTunes or similar services, VoIP uses bandwidth more efficiently than a circuit-switched network. This makes phone calls essentially as cheap to transmit as e-mail.[10] Indeed, VoIP is a good example of the convergence of computers, telephones, and television into a single and more efficient integrated information network environment. I will use the term VoIP in this testimony to mean the IP/PSTN and PSTN/IP/PSTN traffic as defined in the ICA. Importantly, the "IP in the middle" traffic that was the subject of the AT&T FCC petition is specifically excluded when I use the term VoIP.

[10] *See* Comments of VON Coalition in CC Docket No. 01-92, WC Dockets No. 02-361, 03-211, 03-266, 04-36; filed August 19, 2004, at page 2.

Q. Please describe the fundamental differences between VoIP calls and typical PSTN calls.

A. In the simplest of terms, VoIP is an information service application that uses the Internet backbone and discrete data packets to deliver real-time voice communications. Rather than voice information being transmitted across the traditional circuits of the PSTN, VoIP uses Internet Protocol to transit over either the Internet backbone or some other private IP network.[11] In addition to this difference in transmission, VoIP calling, being IP-enabled, facilitates the introduction and integration of all sorts of potential capabilities not present with traditional circuit-switched calls.[12] From a regulatory perspective the IP-based capabilities distinguish VoIP – an information service – from basic circuit-switched telecommunications services.

Q. Does BellSouth offer VoIP services?

A. Yes. ILECs and CLECs alike are offering IP-Enabled services. For instance, BellSouth partners with Cisco and Nortel to offer BellSouth Voice Over IP

[11] In the circuit-switched, TDM model, circuits are "nailed up" to complete a call, and then "torn down" when the callers hang up. For a VoIP call terminating to a Florida BellSouth customer, MCI must perform the conversion from IP to TDM format prior to handing the call off to BellSouth. That is, on MCI's side of the interface, the information is transmitted in packetized form, and MCI performs a protocol conversion and passes the call to BellSouth in TDM format.

[12] For instance, when a subscriber to Vonage's offering misses a call, an email is received detailing the call information (time, calling number, etc.). The features and capabilities of VoIP services are many and expanding rapidly.

Solutions which is a fully hosted VoIP solution.[13] It is no surprise that the BellSouth companies have many IP-enabled services as they have a corporate focus on IP services. Contrary to its positions in this case, however, it is my understanding that BellSouth does not intend to impose access charges on its own IP-enabled services.

Q. Please continue with your discussion of MCI's proposal regarding VoIP.

A. MCI's proposed language is set forth in Sections 7.2, 7.5.1, 7.6.3, 7.6.4, 7.6.5 and 7.7 of Attachment 3. The overall effect of these sections is to treat the VoIP services at issue here consistent with the FCC's rules and Orders regarding the treatment of information services (which previously were called enhanced services).

Q. What is the purpose of the language MCI has proposed for the sections of the Attachment 3 that are covered by these three VoIP issues?

A. MCI's proposed language is straightforward, and seeks to clarify the compensation between the parties of information services traffic, including

[13] *See* BellSouth's website (www.bellsouthlargebusiness.com) for a complete description of its VoIP offerings.

traffic referred to as VoIP traffic. In a series of relatively recent rulings,[14] the FCC has clarified certain issues regarding the jurisdiction of such traffic. The FCC clarified in the AT&T decision that traffic with certain characteristics is not properly considered VoIP traffic. In the Pulver decision, the FCC determined that traffic with certain characteristics is not properly considered "telecommunications traffic" and is therefore not subject to access charges. And in the Vonage decision, the FCC determined that certain traffic is not properly within the states' jurisdiction, and the FCC assumed sole jurisdiction for that traffic. As part of the Vonage decision, the FCC determined that, unlike in the past, the originating and terminating NPA/NXX associated with the calling and called parties' numbers can no longer be relied on to determine call jurisdiction.[15]

Q. Is there any other recent legal authority?

A. Yes. On June 27, 2005, the U.S. Supreme Court examined the FCC's interpretation of the term "information services," as well as the FCC's "basic" versus "enhanced" services distinction, in *National Cable &*

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[14] See, In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, Order (FCC 04-97) released April 21, 2004 ("AT&T decision"); In the Matter of Petition for Declaratory Ruling that pulver.com's Free World dialup is Neither Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45, Order (FCC 04-27) released February 19, 2004 ("Pulver decision"); and In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, Order (FCC 04-267) released November 12, 2004 ("Vonage decision").

[15] *See* FCC 04-267 at ¶¶ 23-32.

Telecommunications Assoc. v. Brand X Internet Services, et al., 2005 WL 1498860 (U.S. June 27, 2005) ("*Brand X*"). In that decision, the Court affirmed the FCC's conclusion that cable companies selling broadband Internet service did not provide "telecommunications services" under the Act, and part of the basis for its decision was that the Act does not mandate the regulation of information service providers as common carriers.

Q. Is MCI asking for new rules for intercarrier compensation for VoIP traffic?

A. No. MCI is not asking the Commission to establish new rules. Rather, MCI is simply seeking the correct interpretation and application of the existing rules for intercarrier compensation for local and ISP-bound traffic

Q. What are some of the distinctions between basic and enhanced services that the FCC has made in past rulings?

A. First, enhanced services have been defined by the FCC to include services in which communications undergo a net protocol change. Enhanced services thus include information services such as the VoIP traffic at issue here. The net protocol change is a key determinant as to what constitutes enhanced services traffic that has remained relatively constant over the past twenty years. In some of its earliest rulings on enhanced services, the FCC prohibited the application of access charges to enhanced service traffic. This, too, has remained constant over the past twenty years. Instead of imposing access charges on enhanced

services, the FCC made clear that LECs can only impose local business rates to such traffic and the facilities that support it.

More recently, the FCC classified ISP-bound traffic as an enhanced service and afforded ILECs rate preference for such traffic if and when the ILEC so chose.[16] BellSouth has elected that rate protection, limiting ISP-bound traffic to a rate of $0.0007 per minute of ISP-bound traffic.

Finally, although I am not a lawyer, I understand that despite predictions of the FCC's interpretation of the terms "information services" and its basic/enhanced services distinction being overturned, the Unites States Supreme Court recently affirmed the FCC's distinction between basic and enhanced services.[17] Thus, it seems straightforward to me that all of the rules and distinctions articulated by the FCC both pre- and post-Act lead to the conclusion that the true VoIP traffic that is the subject of this issue – in contrast to the "IP in the middle" traffic that was the subject of the AT&T petition addressed by the FCC last year and discussed above – is an "information service" to be charged at the $0.0007 per minute of use ("MOU") rate set by the FCC for ISP-bound traffic.

[16] *See In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order in CC Docket No. 99-68, released April 27, 2001 (*ISP Remand Order*).

[17] *See National Cable & Telecommunications Assoc. v. Brand X Internet Services, et al.*, 2005 WL 1498860 (U.S. June 27, 2005) ("*Brand X*").

Q. You mentioned above that there are specific distinctions the FCC has determined, even in a pre-1996 environment, that distinguish between basic and enhanced services. Would you please expand on that?

A. There are two lines of FCC decisions that directly bear on this issue, both of which go back a number of years. One involves the FCC's historic distinction between "enhanced" and "basic" services, and the other involves the creation and application of the access charge regime.

A lengthy set of rulemaking proceedings -- often referred to as the "Computer Inquiry" proceedings – were initiated by the FCC in 1966. The purpose of those proceedings was to provide regulatory guidance on "issues raised by the confluence of technology in the offering of communications and data processing services."[18] The centerpiece of the FCC's determinations in those proceedings was the establishment of the dichotomy of "basic" versus "enhanced" services.[19] Essentially, the category of "basic" services included traditional, common carrier communications services.

The FCC described an enhanced service as:

> any offering over the telecommunications network which is more than a basic transmission service. In an enhanced service, for example, computer processing applications are used to act on the

[18] *In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828, Final Decision, released May 2, 1980 (FCC 80-189), *Computer II*, 77 FCC 2d 384.

[19] Id., ¶ 92.

content, code, protocol, and other aspects of the subscriber's information.[20]

These characteristics remain in the FCC's rules, codified at 47 C.F.R. 51.5.[21] One aspect of these characteristics is critical to the dispute in this case regarding the parties' treatment of certain types of so-called VoIP traffic. That is, the FCC's rules and orders provide that ***any*** service that undergoes a "protocol conversion" – that is, a net change in the protocol – is an enhanced or information service and is thus not subject to access charges. In the case where traffic is originated by a person over a broadband connection rather than a traditional phone line, the (voice) information transmitted ***cannot be terminated to a traditional phone line without undergoing a protocol conversion*** – i.e., from Internet Protocol to the Time Division Multiplexing ("TDM") protocol used by LECs to operate traditional telephone networks.[22] In other words, the type of communication MCI is referring to is not traffic that originates and terminates in TDM, but rather either originates or terminates in IP, such that there is a net protocol change in the course of the communication.

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[20] Id., ¶ 97.

[21] The term used in the FCC's rules is "information service," but a reading of the definition reveals that the term is intended to be synonymous with its earlier definition of "enhanced service" quoted here.

[22] "[T]he Internet employs an open network architecture using a common protocol – the Internet Protocol, or IP – to transmit data across the network in a manner fundamentally different than the way in which signals transit a circuit-switched service." IP-Enabled Services NPRM, WC Docket No. 04-36, FCC 04-28, ¶ 8;

Q. You stated above that the line of decisions regarding basic and enhanced services was one of the two key lines of decisions decided by the FCC. Please describe the second line of decisions.

A. The FCC's line of decisions pertaining to the creation and application of the access charge regime represents the second line of decisions that support MCI's position on this issue. The series of decisions surrounding the creation of the access charge regime began in the 1970s. In the FCC's *MTS and WATS Market Structure* proceeding, the FCC declined to impose the new access charge regime on providers of enhanced services in a 1983 decision:

> Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them. One of our paramount concerns in fashioning a transition plan is the customer impact or market displacement that any proposed remedy might cause. Were we at the outset to impose full carrier usage charges on enhanced service providers and possibly sharers and a select few others who are currently paying local business exchange service rates for their interstate access, these entities would experience huge increases in their costs of operation which could affect their viability. The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage and imposing charges in an evenhanded manner. We would envision that once a procedure is implemented by which the exchange carriers charge all access service users for their usage on an equal basis, the level of carrier access charges in general should fall as the universe of liable entities is expanded. For this reason also, it would be unreasonable immediately to increase as much as tenfold the

> charges paid by customers who do not presently come under the coverage of the current ENFIA tariff.[23]

Thus, before the access charge regime was implemented on January 1, 1984, the FCC had concluded that access rates were not to be charged on enhanced services.

Under pressure from the Regional Bell Operating Companies ("RBOCs"), the FCC initiated a rulemaking proceeding for the express purpose of reexamining its initial position on treatment of enhanced services. The FCC released its Order in CC Docket No. 87-215, *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, on April 27, 1988. In its order, the FCC concluded:

> [T]he imposition of access charges [on enhanced services] at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired.[24]
>
> Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges.[25]

Q. How does this history bear on the parties' dispute in this case?

A. As noted, the FCC ignored the RBOCs' cries of gloom and doom and upheld the exemption from payment of interstate access charges by enhanced services

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[23] *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Memorandum Opinion and Order, Released August 22, 1983; 97 F.C.C.2d 682; ¶ 83.

[24] 3 FCCR 2631, ¶ 17.

[25] Id., fn 8. The FCC's decision was contrary to the tentative conclusion stated in the notice initiating the rulemaking proceeding.

providers.[26] At that time, the FCC was still working through issues related to the (then) new access charge regime. The ILECs – including BellSouth -- had urged the FCC to modify its rules so that per-minute access charges would apply broadly to both basic and enhanced services. The FCC took note of the ILECs' arguments, [27] but over their objections, left in place the exemption for enhanced services providers.

Q. Why did the FCC leave the exemption in place?

A. The FCC has continued its "hands-off" regulatory approach for information services to avoid imposing severe rate increases on Enhanced Service Providers ("ESPs") and to avoid disrupting that industry segment.[28] This is an example of protecting nascent technologies and services by ensuring that the rates paid are not significantly above cost, because to impose access charges would have the effect of continuing the implicit subsidies that Congress determined in 1996 should be eliminated. In 1983 the FCC ruled that even though interstate traffic to and from enhanced service providers could, logically, be subject to per-minute access charges, those charges would not apply. The explicit basis for

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[26] *Id.*, Order, ¶ 1.

[27] *Id.*, Notice, ¶ 3

[28] *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*; WC Docket No. 02-361, ORDER, Released April 21, 2004, FN 60.

this ruling was that this new market should not be required to pay rates that include subsidies for the traditional network.

As noted above, this exemption expressly applies to VoIP services that use protocol conversion. Moreover, the ***policy*** behind the FCC's rule applies with full force here. VoIP is a nascent technology. There are many different forms of these services, and different entities are pursuing different technical and business strategies. While we should not ask legacy network operators like BellSouth to provide explicit subsidies to these new services, neither should we ask the new services to provide subsidies to legacy network operators like BellSouth. It follows, from an economic perspective, that VoIP services should be permitted to interconnect with the legacy network at cost-based rates (either Section 251(b)(5) reciprocal compensation rates or the FCC-established $0.0007 rate), rather than requiring those services to pay subsidy-laden access charges.[29]

Q. What is the status of the exemption at present?

A. That exemption continues to this day. In the FCC's March 2005, *Further Notice of Proposed Rulemaking* in CC Docket 01-92, one of the proposals under

[29] Even though interstate access rates have been declining over time, they are still well above what an economist would view as a cost-based rate. To be cost-based from an economic perspective requires that a rate be in line with forward-looking incremental (and sometimes, marginal) cost. Intercarrier compensation rates developed in connection with Section 251(b)(5) and ISP-bound calling reflect this approach; whereas traditional access rates do not.

consideration would "eliminate the ESP exemption."[30] The FCC described the proposal as "eliminat[ing] the ESP exemption for ISPs terminating traffic to the PSTN."[31] The FCC has not yet acted on that or any other proposal.[32]

Q. The last sentence of MCI's proposed Section 7.5.1 states, "*This compensation regime for IP/PSTN and PSTN/IP/PSTN Traffic shall apply regardless of the locations of the calling and called parties, and regardless of the originating and terminating NPA/NXXs.*" Didn't you support the determination of call jurisdiction by using the rating points of the calling and called NPA/NXXs in your testimony on Issue 17B?

A. Yes, I did.

Q. Isn't that inconsistent with your position here?

A. No, it is not. I advocate abandoning the NPA-NXX analysis only for VoIP traffic. I do so because that is precisely what the FCC determined with respect to VoIP traffic. Because the originating and terminating NPA-NXXs are no longer the determinant of call jurisdiction, BellSouth may not impose intrastate access charges on VoIP traffic that otherwise ***appears*** to be "intrastate" or "interstate."

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[30] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Further Notice released March 3, 2005 (FCC 05-33), ¶ 45.

[31] Id. See also, ¶ 105 noting that the exemption allows for the use of "tariffed retail services."

[32] In fact, the comment round in the Further Notice is still underway, meaning that a decision before 2006 is unlikely.

In past regulatory decisions on enhanced service traffic, the FCC ruled that while access charges do not apply to enhanced services traffic, LECs are free to charge the applicable end-user local service rates to the enhanced service providers. MCI is the carrier for the enhanced service providers at issue here. According to the FCC's rulings, it may only charge the enhanced service providers for local end user services. That necessarily limits BellSouth to charging MCI for the rates for the exchange of local services, either enhanced or basic. Thus, BellSouth may only charge MCI for enhanced service traffic terminations at the local reciprocal compensation rate previously approved by this Commission or at the ISP-remand order rate of $0.0007 minute. Since Internet service is categorized by the FCC as an enhanced service, the same rate that applies to ISP-Bound traffic should be applied to enhanced service traffic -- $0.0007 per minute of use.

This is the only rate that is fully consistent with past rulings of the FCC regarding enhanced services, access charges and the ISP remand Order of the FCC. The language of Section 7.5.1 set forth above, as well as MCI's language in the remainder of the Attachment 3 sections that are the subject of these VoIP issues, clearly and correctly implements the FCC rules and orders regarding enhanced service traffic, including VOIP. MCI's language should be adopted by the Commission.

Q. What is your recommendation to the Commission on this issue?

A. The Commission should adopt MCI's proposed VOIP language..

E. Primary Toll Carrier Issues

Issue 21 – Interconnection (Attachment 3)

Statement of Issue: For intraLATA toll traffic originated by an ICO, carried over BellSouth's network and then terminated by MCI: A) what rate is MCI entitled to charge BellSouth, if at all; and B) what records should be used to bill BellSouth?

ICA Provision at Issue: Attachment 3, Section 7.5.4

Q. What is MCI's position on Issue 21?

A. Any traffic delivered for termination to MCI customers that has been handed to BellSouth by an independent telephone company ("ICO") should be sent to MCI over the Feature Group D ("FGD") trunk group and not the local interconnection trunks. Further, if and only if BellSouth provides the information that allows MCI to bill the originating ICO, then MCI will render a meet point bill to the ICO for MCI's portion of the switched access charges. It is up to BellSouth to bill the ICO for its portion of the terminating access charges.

In the event that information sufficient to determine the originating ICO is not provided by BellSouth either with the call record or, alternatively, with the call records provided by BellSouth under the meet point billing guidelines, then MCI will be left with billing BellSouth. That is the only option available to

MCI, since the traffic comes to MCI on FGD trunks directly connected to BellSouth.

F. Transit Issues

Issue 25 – Interconnection (Attachment 3)

Statement of Issue: Should a transiting party have to pay the terminating party intercarrier compensation if the transiting party is unable to provide the terminating party the records necessary for the terminating party to bill the originating third party?

ICA Provision at Issue: Attachment 3, Section 7.10.1

7.10.1 ... ***If the transiting Party is unable to provide the records necessary for the terminating Party to bill the originating third party, the terminating Party may bill, and if billed the transiting Party shall pay, the applicable charges.***

Issue 26 – Interconnection (Attachment 3)

Statement of Issue: Is BellSouth obligated to act as a transit carrier? If so, what is the appropriate transit rate?

ICA Provision at Issue: Attachment 3, Section 7.10.2

7.10.2 The delivery of traffic that transits the BellSouth network and is transported to another carrier's network is excluded from any BellSouth billing guarantees. Bellsouth agrees to deliver transit traffic to the terminating carrier; provided, however, that MCI is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of transit traffic through the BellSouth network. Bellsouth will not be liable for any compensation to the terminating carrier or to MCI. In the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of transit traffic, MCI shall reimburse BellSouth for such costs.

Q. What is the fundamental disagreement with Issues 25 and 26?

A. These two issues both revolve around the initial question in Issue 26 – is BellSouth required to act as a transit carrier? As I show below, the answer to that question is emphatically, "Yes."

Q. What is "transit traffic?"

A. The term "transit traffic" is used to describe a scenario where BellSouth is involved in switching traffic that neither originates from, nor terminates to, a BellSouth customer. The following example will help explain the concept. Assume that "CLEC A" and MCI both provide competitive local service in BellSouth's local Miami territory. We will further assume that both CLECs interconnect with BellSouth – which is the norm – but that the networks of "CLEC A" and MCI in Miami are not directly interconnected with each other.

Because there is no direct connection between CLEC A's network and MCI's network, if a Miami customer of CLEC A calls an MCI Miami customer, CLEC A would route the call to BellSouth's Miami tandem switch using CLEC A's existing interconnection trunks. BellSouth would then perform a tandem switching function, pointing the call to MCI's existing interconnection trunks for termination to MCI's Miami customer. BellSouth is compensated by CLEC A for the tandem switching function BellSouth performs to route the call to MCI's network.

The same process works in reverse when the MCI customer calls CLEC A's customer except, because the call is originating on MCI's network, MCI pays BellSouth for the tandem switching. The term "transit" is used to describe the tandem switching and tandem transport function performed by BellSouth when its customer neither originates nor receives the call.

Q. What is the nature of the dispute over "third party transit traffic?"

A. The heart of the dispute is BellSouth's refusal to consider transit as a mandatory part of this agreement.

Importantly, as discussed in the transit traffic example, the only function provided by BellSouth to handle such traffic is the function of tandem switching and some amount of tandem transport in order to terminate calls between Telecommunications Service Providers. Transiting is therefore an interconnection function and has nothing to do with other provisions of the interconnection agreements, e.g., those involving unbundled network elements.

Q. Have any federal courts addressed whether incumbents like BellSouth can be required to make transiting available, as opposed to making it available at the ILECs' option?

A. Yes. On March 23, 2004, the United States Court of Appeals for the Sixth Circuit affirmed a decision of the Michigan Public Service Commission rejecting the claim of SBC Michigan that it could not be required to make

transiting available to CLECs, and that it would do so only as a "voluntary" offering.[33] BellSouth's refusal to negotiate TELRIC rates applicable for such interconnection is not consistent with this precedent. BellSouth has not provided good reason for assessing non-TELRIC rates for this interconnection traffic. Given the FCC's determination in its *First Report and Order* that the transiting function is to be a component of interconnection to be addressed in interconnection agreements, there is no support for BellSouth's position here. No state – neither those in which BellSouth provides ILEC service nor any other – has adopted BellSouth's position that transit need only be offered on a voluntary basis. Nor, to my knowledge, has any state allowed an ILEC to charge whatever the market would bear for transit service.

Q. What rate does BellSouth propose for transit traffic?

A. BellSouth proposes $0.0025 per minute for the tandem switching. It labels this charge "Tandem Intermediary Charge, per MOU." I will simply call this "BellSouth's proposed transit rate." BellSouth follows this line with an asterisk that provides: "This charge is applicable only to transit traffic and is applied in addition to applicable switching and/or interconnection charges."

Q. Why does MCI disagree with BellSouth's proposed transit rate?

[33] *Michigan Bell Tel. Co. v. Chapelle*, Unpublished Order, No. 02-2168 (6th Cir. Mar. 23, 2004), *affirming Michigan Bell Tel. Co. v. Chappelle*, 222 F.Supp.2d 905 (E.D. Mich. 2002).

A. In the two lines immediately above BellSouth's proposed transit rate are rates for BellSouth's proposed tandem switching. BellSouth's proposed transit service rate used for transiting is over twenty-one times the rate that BellSouth proposes for the identical tandem switching function when that function is not part of transiting. The discrimination based on this disparity alone is sufficient reason for the Commission to reject this proposal. On the other hand, the interconnection rates proposed by MCI for Florida are those currently ordered by this Commission in Docket No. 990649A. The tandem switching rates approved by the Commission in that docket are the only reasonable rates to accomplish the tandem function for transit traffic. BellSouth's position that these rates should somehow be excluded here makes no sense. There is neither a sound economic nor sound public policy reason not to include those rates in this Agreement, consistent with my discussion of this issue as it pertains to the mandatory nature of Transit Services in Interconnection Agreements discussed above.

Q. What is your recommendation with respect to transit?

A. The Commission should require that transit be a part of the ICA. The Commission should conclude that transiting is appropriately addressed by the parties' interconnection agreement, and adopt the rates, terms, and conditions proposed by MCI. The transit tandem switching rate proposed by BellSouth is

excessive, anti-competitive, and not in any way compliant with the TELRIC principles set forth by the FCC in implementing the Act.

IV. CONCLUSION

Q. Does this complete your direct testimony?

A. Yes it does.