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December 1, 2005

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 050419-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services, LLC are an original and fifteen copies of the following documents:

1. Public version of the Rebuttal Testimony of Gregory J. Darnell; 11356-05

2. Revised Exhibit GJD-2 to replace Exhibit GJD-2 attached to Gregory J. Darnell's Direct Testimony filed on October 21, 2005; 11357-05

3. Rebuttal Testimony of Michael J. Lehmkuhl; 11358-05

4. Rebuttal Testimony of Sherry Lichtenberg; and 11359-05

5. Rebuttal Testimony of Dennis L. Ricca. 11360-05

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

CMP
COM 2
CTR OR 0
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SGA
SEC 1
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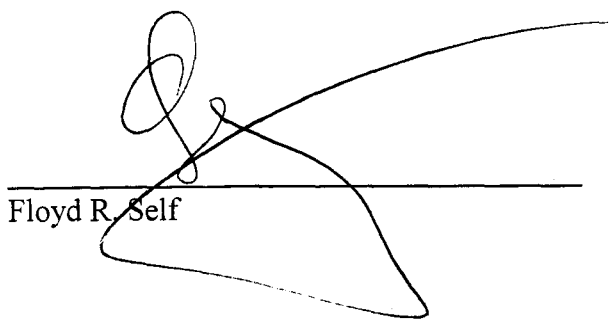
FRS/amb
Enclosures
cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U. S. Mail this 1st day of December, 2005.

Kira Scott
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James Meza, III
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301



Floyd R. Self

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.	)	
	)	

REBUTTAL TESTIMONY OF GREGORY J. DARNELL

On Behalf of

MCImetro Access Transmission Services LLC
(MCI)

PUBLIC

DECEMBER 1, 2005

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Greg Darnell, and my business address is 6 Concourse Parkway, Atlanta, Georgia, 30328.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS ARBITRATION PROCEEDING AND WILL YOUR REBUTTAL TESTIMONY COVER THE SAME ISSUES ADDRESSED BY YOUR DIRECT TESTIMONY?

A. Yes. My Rebuttal Testimony will address issues 1, 2, 3, 9(a), 11, 12, 27, 29, 32, 33 and 34, and the statements made by BellSouth witnesses Ms. Pam Tipton, Mr. Eric Fogle and Mr. Eddie Owens on these issues. I am providing my testimony on behalf of MCImetro Access Transmission Services, LLC. ("MCI").

GENERAL TERMS AND CONDITIONS

ISSUE 1

What language should be included in the Parties' Agreement to limit or eliminate (a) liability in general; (b) liability arising from tariffs or contracts with End Users; or (c) liability for indirect, incidental or consequential damages? (General Terms and Conditions, Sections 5.2, 5.3, 5.5.)

Q. MS. TIPTON'S DIRECT TESTIMONY CONCERNING ISSUE 1(A) STATES THAT THE LIMITATION ON EACH PARTY'S LIABILITY IN CIRCUMSTANCES OTHER THAN GROSS NEGLIGENCE SHOULD BE THE ACTUAL COST OF THE SERVICE OF FUNCTIONS NOT PERFORMED OR IMPROPERLY PERFORMED AND THIS IS THE SAME STANDARD THAT MCI USES TO LIMIT ITS LIABILITY WITH END USERS. (TIPTON DIRECT, P. 4.) WHY SHOULD BELLSOUTH

BE HELD TO A HIGHER STANDARD THAN MCI PROVIDES TO ITS OWN END USERS?

A. MCI's end users have a choice and if they do not like MCI's service or the terms and conditions under which its service is offered, the market will provide them the ability to buy similar or identical service from someone else. In contrast, the FCC determined that CLECs are impaired without the ability to purchase the unbundled network elements ("UNEs") being arbitrated in this proceeding, which means MCI does not have any viable alternative to UNEs that BellSouth must provide under the parties interconnection agreement ("ICA"). As MCI's sole supplier and its competitor, BellSouth is in a position to inflict substantial business harm to MCI that could drastically exceed the cost of the services provided. In addition, the financial benefits BellSouth could obtain by harming MCI may exceed its cost of service, and the liability limitation it proposes. Therefore, if BellSouth's liability were limited to the cost of service, in certain cases (e.g. provision of service to high profile customers and the damage to MCI's brand and reputation that could be caused by failure to provide good service) it may be in BellSouth's financial best interest to fail to comply with the terms and conditions of the agreement. BellSouth's potential liability under the ICA therefore should not be limited to the cost of services provided.

Q. MS. TIPTON STATES THAT BELLSOUTH'S CURRENT UNE RATES DO NOT TAKE INTO ACCOUNT POTENTIAL UNLIMITED LIABILITY AND, AS SUCH, IF THE COMMISSION WERE TO

ACCEPT MCI'S PROPOSED LANGUAGE UNE RATES SHOULD BE INCREASED. (TIPTON DIRECT, P. 4.) IS THIS ACCURATE?

A. No. The Commission established BellSouth's current UNE rates using what it determined to be a forward-looking cost of capital. This cost of capital is applied to the rates for all UNEs and includes all risk that the Commission believes BellSouth will face.

Q. DID THE COMMISSION DECIDE TO LIMIT BELLSOUTH'S LIABILITY IN THE LAST ARBITRATION BETWEEN MCI AND BELLSOUTH?

A. No. In MCI's previous arbitration with BellSouth the Commission did not decide to limit BellSouth's potential liability to the actual cost of the services or functions not performed or improperly performed.[1] MCI's currently effective interconnection agreement with BellSouth reflects this decision and does not limit BellSouth's potential liability to the cost of the service provided. As such, the risk caused by MCI's proposed contract language is not unprecedented, was known at the time UNE rates were developed and all forward-looking risk was incorporated in the UNE rates established in Docket 990649 and 990649A.

Q. IF THE COMMISSION WANTS TO MAINTAIN THE STATUS QUO ON ISSUE 1 SO THAT UNE RATE ISSUES CAN BE AVOIDED, WHAT SHOULD IT REQUIRE?

[1] See, *MCI Arbitration Order*, Docket No. 000649-TP, Order No. PSC-01-0824-FOF-TP, March 30, 2001, p. 185.

A. The Commission should require the parties to accept the indemnification and limitation of liability language that exists in BellSouth's currently effective interconnection agreement with MCI which is provided in Exhibit GJD-3.

Q. WOULD MCI BE WILLING TO ACCEPT THE INDEMNIFICATION AND LIMITATIONS OF LIABILITY LANGUAGE IN ITS CURRENTLY EFFECTIVE INTERCONNECTION AGREEMENT WITH BELLSOUTH AS A RESOLUTION TO ISSUE 1?

A. Yes.

ISSUE 2

What terms or conditions, if any, should be included in the Agreement regarding the appropriate forum to address disputes? (General Terms and Conditions, Section 8.)

Q. HAS THE COMMISSION RECENTLY RULED ON THIS ISSUE IN ANOTHER ARBITRATION?

A. Yes. The Florida PSC determined that the Commission "has primary jurisdiction over most disputes arising from interconnection agreements."[2] MCI would accept contract language that reflects the decision of the Florida PSC, which would state the Commission has **primary** jurisdiction over **most** disputes arising from interconnection agreements. In MCI's arbitration with BellSouth in North Carolina, Ms. Tipton has agreed that the previous decision of the Florida

[2] Florida Public Service Commission, Order No. PSC-05-0975-FOF-TP, October 11, 2005, p. 15 ("Florida Joint Petitioner Order")

Public Service Commission on this issue is "sound".[3] However, contrary to what Ms. Tipton stated in North Carolina and in her Direct Testimony, BellSouth's proposed contract language in Florida would require **all** disputes to be first brought to the Commission. MCI will not agree to language that says **all** disputes **must** first be brought to the Commission. It is not appropriate for this Commission to attempt to divest other agencies (and in particular the federal courts) of jurisdiction they otherwise would have.

Q. IS MCI'S POSITION IN THIS ARBITRATION CONSISTENT WITH THE PROVISIONS OF ITS CURRENTLY EFFECTIVE INTERCONNECTION AGREEMENT WITH BELLSOUTH?

A. Yes. MCI's currently effective interconnection agreement with BellSouth does not require MCI to take all disputes first to the Commission.

ISSUE 3

What rates, terms, and conditions for the disputed rate elements in Attachment 2 should be incorporated into the Agreement? (Attachment 2, Exhibit B and Pricing Attachment)

Q. HAVE ANY RATE ISSUES ADDRESSED IN YOUR DIRECT TESTIMONY BEEN RESOLVED THROUGH CONTINUED NEGOTIATIONS WITH BELLSOUTH?

A. Yes. I have provided a Revised Exhibit GJD-2 that illustrates the current resale, unbundled network element, interconnection and collocation agreed upon and disputed rates. Items listed in bold and underlined type

[3] BellSouth Telecommunications, Inc. Direct Testimony of Pam Tipton Before the North Carolina Utilities Commission, Docket No. P-474, Sub 14, September 29, 2005, p. 15.

(i.e., BellSouth's position) and items listed as bold and italicized type (i.e. MCI's position) indicate that rate attachment items that remain in dispute.

The disputes that continue to exist between MCI and BellSouth regarding the appropriate UNE rates as set forth on Revised Exhibit GJD-2 are as follows:[4]

a. Rates for DADS.

b. Service rearrangement charges for change in Channel Facility Assignment ("CFA").

c. UNE Loop to Special Access loop switch-as-is nonrecurring charges.

d. Special Access loop to UNE Loop switch-as-is nonrecurring charges and ordering codes.

e. The appropriate elements to be included in the transition plan for wire centers where CLEC impairment is deemed not to exist (i.e., Attachment 2 Exhibit B elements).

f. Miscellaneous disputes concerning the appropriate EODUF rate for resale, CLEC to CLEC conversion of loops, Access to DCS, multiplexing, UNE Single Network Element ("SNE") Switch-As-Is, Enhanced Extended Loop (EEL) Switch-As-Is and Line Splitting rates.

[4] MCI is not filing cost studies. MCI respectfully requests that the Commission's previous TELRIC determinations apply as noted. Otherwise, BellSouth should be required to file cost studies in support of any new rates it may propose.

A. RATES FOR DADS

Q. ARE THE APPROPRIATE RATES FOR DADS ADDRESSES BY ANOTHER MCI WITNESS?

A. Yes. They are addressed by Mr. Michael Lehmkuhl.

B. SERVICE REARRANGEMENT CHARGES FOR CFA CHANGES

Q. ON PAGE 16 OF MS. PAM TIPTON'S DIRECT TESTIMONY SHE CLAIMS THAT BELLSOUTH HAS PROPOSED TELRIC RATES FOR CFA CONVERSIONS. ARE BELLSOUTH'S PROPOSED RATES FOR CFA CONVERSIONS COMPLAINT WITH TELRIC?

A. No. BellSouth's proposed new charges for service rearrangements requiring changes in CFA are not complaint with TELRIC. In Dockets 990649 and 990649A the Commission determined BellSouth's TELRIC compliant cost of service rearrangements, including those rearrangements requiring changes in CFA, and included those costs in BellSouth's ordered UNE rates. The new separate charges for service rearrangements that BellSouth has proposed in this arbitration recover "TELRIC Plus," meaning they recover cost in addition to that which the Commission determined to be TELRIC. BellSouth's proposed new separate charges for service rearrangements requiring changes in CFA

clearly and mathematically violate FCC TELRIC pricing rule 47 C.F.R. 51.511(a).

FCC TELRIC pricing rule 47 C.F.R. 51.511(a) is simple math. It states that UNE rates must equal TELRIC divided by demand. It therefore it mathematically follows that UNE rates times demand must equal TELRIC. The Commission determined what it believed to the TELRIC associated with all types of loops and switching in Dockets 990649 and 990649A, and divided TELRIC by demand to create BellSouth's current UNE rates (i.e., T / D = R, where T is TELRIC, D is Demand and R is rates) . The creation of any new or additional loop or switching related rates without an offsetting reduction to existing loops or switching rates would violate the Commission prior TELRIC determination (i.e., T / D < R + N, where "N" is any additional rate).

BellSouth's proposed service rearrangement rates are new loop related charges that would be in addition to those covered by the Commission's prior determination of TELRIC. BellSouth has not proposed any offsetting reduction to existing loop rates. BellSouth's service rearrangement rate proposal would cause the sum of its unbundled loop rates to exceed the Commission's prior determination of TELRIC divided by demand and therefore is not lawful.

Q. MS. TIPTON STATES "IT APPEARS THAT RATHER THAN STUDYING THE RATES THAT BELLSOUTH HAS PROPOSED, LOOKING AT THE RELEVANT COST DATA AND MAKING A

DECISION FOR ITSELF ABOUT WHETHER THE RATES ARE APPROPRIATE OR NOT, MCI HAS DECIDED TO TAKE THE POSITION THAT NO RATE THAT HAS NOT BEEN VETTED BY THIS COMMISSION IS ACCEPTABLE TO THEM." IS THIS MCI'S POSITION?

A. No. MCI has studied BellSouth's proposed rates in this regard and has determined that BellSouth's proposed rates for service rearrangements requiring CFA changes are not compliant with TELRIC. The administrative costs BellSouth incurs for service rearrangements, including those service rearrangement requiring CFA changes, were not removed from the cost used to develop the current UNE rates.[5]

As stated in BellSouth's narrative describing how the current UNE rates were established, operating expenses associated with the "assignment of provisioning expenses (Account 6512), and network operations expenses (Account 653X)"[6] were developed using "the relationships of projected average annual expense for the 2000-2002 period to the actual 1998 expense amounts on an account level basis"[7] and the "maintenance expenses incorporated in the Plant Specific

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[5] See, Revised Direct Testimony of Ms. D. Daonne Caldwell, filed on Behalf of BellSouth on August 18, 2000, Exhibit DDC-1 (CD ROM), Docket 990649, Appendix F, EXPPRJ00.xls, EXPPRJ00.doc and PLSP99Ey.xls, USOA 6532.

[6] *Ibid*, file Narrative.doc, section 5, page 14.
[7] *Ibid*, file Narrative.doc, section 5, page 17.

Expense factors include those associated with... rearranging and changing the location of plant not retired."[8]

BellSouth is thus recovering what the Commission determined to be its forward-looking cost of service rearrangements requiring CFA changes from all UNE rates. At this point, MCI sees no reason to modify the current situation where the forward-looking cost of service rearrangements is recovered through all UNE rates and no separate charge is assessed for service rearrangements.

C. UNE LOOP TO SPECIAL ACCESS SWITCH-AS-IS

Q. ON PAGE 16 OF MS. PAM TIPTON'S DIRECT TESTIMONY SHE CLAIMS THAT BELLSOUTH HAS PROPOSED TELRIC RATES FOR UNE LOOP TO SPECIAL ACCESS SWITCH AS IS. ARE BELLSOUTH'S PROPOSED RATES FOR UNE LOOP TO SPECIAL ACCESS SWITCH-AS-IS COMPLAINT WITH TELRIC?

A. No. As I explain in my Direct Testimony, BellSouth's proposed new charges for UNE Loop to Special Access switch-as-is are not complaint with the Commission's prior determination of TELRIC.

Q. MS. TIPTON STATES "IT APPEARS THAT RATHER THAN STUDYING THE RATES THAT BELLSOUTH HAS PROPOSED, LOOKING AT THE RELEVANT COST DATA AND MAKING A

[8] *Ibid*, file Narrative.doc, Section 5, page 7.

DECISION FOR ITSELF ABOUT WHETHER THE RATES ARE APPROPRIATE OR NOT, MCI HAS DECIDED TO TAKE THE POSITION THAT NO RATE THAT HAS NOT BEEN VETTED BY THIS COMMISSION IS ACCEPTABLE TO THEM." (TIPTON DIRECT, P. 17) IS THAT CORRECT?

A. No. As I explain in my Direct Testimony, the rate for UNE Loop to Special Access Switch-As-Is must be below $8.98, which is the rate for UNE Loop/Transport combination switch-as-is, to be complaint with the Commission's prior determination of TELRIC. BellSouth's proposed UNE Loop switch-as-is rates are $24.97 First Single LSR and $26.46 First Spreadsheet and therefore are not TELRIC compliant.

D. SPECIAL ACCESS TO UNE LOOP SWITCH-AS-IS

Q. DID BELLSOUTH ADDRESS THIS ISSUE IN DIRECT TESTIMONY?

A. No. It appears that MCI and BellSouth are in agreement on this issue and the only item that remains is for BellSouth to provide MCI with a Uniform System Ordering Code ("USOC") to enable special access to UNE loop switch-as-is.

Q. DOES BELLSOUTH'S FAILURE TO PROVIDE MCI WITH A USOC CODE FOR SPECIAL ACCESS TO UNE LOOP SWITCH-AS-IS CAUSE MCI CONCERN?

A. Yes. Without working USOCs, the agreed upon contract language and BellSouth's commitment to permit special access to UNE loop switch-as-is cannot be implemented. The Commission should order BellSouth to establish working USOCs so that its commitment to permit special access to UNE loop switch-as-is can be implemented and the Commission should order that the rates for these USOCs be the equal to the rates established for UNE loop to Special Access switch-as-is. (*See* Issue 3(c) above.)

Q. IS THIS AN IMPORTANT ISSUE FOR MCI?

A. Yes. In August 2003, the FCC reduced restrictions on commingling in the *TRO.* [9] These reduced commingling restrictions are just now being implemented in the ICA being arbitrated in this proceeding. The new commingling terms contained in this ICA may open up opportunities for MCI to migrate some of its existing special access facilities to UNEs. Doing so may reduce MCI's wholesale cost, enhance its position in the market and bring lower prices to consumers. Of course, providing MCI with increased opportunities to reduce wholesale cost and enhance its position in the market is not in the financial interest of BellSouth. This is why BellSouth's failure to provide MCI with a USOC to enable special access to UNE loop switch-as-is raises MCI's concern over BellSouth's commitment to permit this action.

[9] FCC *TRO*, paragraph 579-611.

D. ATTACHMENT 2 EXHIBIT B ELEMENTS

Q. ON PAGE 3 OF MR. ERIC FOGLE'S TESTIMONY HE STATES THAT "BELLSOUTH TAKES THE POSITION THAT UNIMPAIRED HDSL LOOPS ARE SUBJECT TO THE 115% PRICE INCREASE ESTABLISHED BY THE *TRRO* DURING THE TRANSITION PERIOD." IS THIS A SOURCE OF DISPUTE IN ATTACHMENT 2 EXHIBIT B BETWEEN MCI AND BELLSOUTH?

A. No. MCI agrees that HDSL loops should be subject to the 115% price increase established by the *TRRO* during the transition period. Mr. Fogle's testimony in this regard therefore is not relevant to the dispute between the parties.

Q. ON PAGE 3 OF HIS DIRECT MR. FOGLE STATES THAT "MCI TAKES THE POSITION THAT [HDSL LOOPS] SHOULD STILL BE PRICED AT TELRIC, EVEN IN UNIMPAIRED WIRE CENTERS." IS THIS MCI'S POSITION?

A. No.

Q. WHAT IS THE SOURCE OF THIS ATTACHMENT 2 EXHIBIT B DISPUTE?

A. The source of this dispute has nothing to do with HDSL loops. The source of this dispute is that BellSouth has taken the position that

unimpaired HDSL "Compatible" Loops should be subject to the 115% price increase established by the *TRRO* during the transition period.

Q. HOW ARE HDSL "COMPATIBLE" LOOPS DIFFERENT FROM HDSL LOOPS?

A. As explained in my Direct Testimony and in Docket 990649, HDSL "Compatible" loops are unloaded copper wires less than 12,000 feet in length with no electronics on either end.[10] HDSL compatible loops provide no signal of any kind and do not transmit any data at any speed. In contrast, HDSL loops have electronics on both ends and deliver a symmetrical 1.544 mbps signal.

Q. WHY SHOULDN'T HDSL "COMPATIBLE" LOOPS BE INCLUDED IN ATTACHMENT 2 EXHIBIT B AND BE SUBJECT TO THE "NONIMPAIRMENT" TRANSITION?

A. HDSL compatible loops provide CLECs with a choice. By self-provisioning additional equipment, CLECs can use HDSL compatible loops to create DS1s. HDSL compatible loops provide CLECs that don't have loops with a choice between buying DS1s at market rates from BellSouth or other providers, or building DS1s themselves by buying HDSL compatible loops from BellSouth and self-deploying equipment to make those loops into DS1s. As stated by BellSouth in its *ex parte* communication with the FCC during the *TRRO* and in the *TRRO* itself,

[10] Florida Docket 990649, Supplemental Direct Testimony of Ms. D. Daonne Caldwell, filed on Behalf of BellSouth on August 18, 2000, Exhibit DDC-1 (CD ROM), Narrative and Description of Elements, file Narrative.doc, Section 6, page 24-25

competitive LECs can use HDSL compatible loops to provide DS1 service in wire centers where high-capacity loop unbundling is not required.[11] Further, BellSouth's testimony does not even address HDSL compatible loops. There simply is no reason for the Commission to find that HDSL compatible loops should be included in the nonimpairment transition section of the ICA (i.e. Attachment 2, Exhibit B).

Q. IN RECENT NEGOTIATIONS AND IN BELLSOUTH'S NORTH CAROLINA REBUTTAL TESTIMONY BELLSOUTH HAS TAKEN THE POSITION THAT BECAUSE OF AGREED UPON CONTRACT LANGUAGE IN ATTACHMENT 2, SECTION 1.10.4, MCI SHOULD NOT DISPUTE INCREASING RATES FOR HDSL COMPATIBLE LOOPS BY 115% AND INCORPORATING THEM INTO ATTACHMENT 2 EXHIBIT B. DOES THE CONTRACT LANGUAGE ADDRESS WHICH UNES SHOULD BE PART OF THE "UNIMPAIRMENT" TRANSITION TO BE INCLUDED IN EXHIBIT B?

A. No. The agreed upon contract language in Attachment 2, Section 1.10.4 states:

> When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization as the higher bandwidth and Central Office Channel Interfaces will be billed from the same jurisdictional authorization (e.g., agreement or tariff) as the lower bandwidth.

[11] *See*, FCC *TRRO*, paragraph 163 and footnote 454.

This contract language addresses when special access and UNE rates should apply to a commingled facility. This language does not address whether certain UNEs should be part of the unimpairment transition. BellSouth's argument that MCI has agreed upon contract language that impacts whether HDSL compatible loops should be in Attachment 2, Exhibit B is not accurate.

Q. BELLSOUTH STILL PROPOSES TO MAKE DS1 TO DS0 MULTIPLEXERS PART OF THE UNIMPAIRMENT TRANSITION AND INCLUDE THIS ELEMENT IN ATTACHMENT 2 EXHIBIT B. IS THIS APPROPRIATE?

A. No. While BellSouth has withdrawn its request to make DS0 line cards part of the unimpairment transition and have this elements contained in attachment 2 exhibit B, BellSouth still contends that DS1 to DS0 multiplexers should be part of the unimpairment transition. For the reasons stated in my Direct Testimony on this matter, BellSouth's position should be rejected. DS1 to DS0 multiplexers are not typically used to provide service to enterprise customers and should not be included in Attachment 2, Exhibit B.

F. MISCELLANEOUS RATE DISPUTES

Q. WHAT MISCELLANEOUS RATE DISPUTES STILL EXIST?

A. As shown on Revised Exhibit GJD-2, in addition to the items addressed above, several other minor rate disputes exist between MCI and BellSouth. In all cases, MCI seeks the rates the Commission established for BellSouth in Docket

990649A in May and September 2002. These miscellaneous items are as follows:

1. **DS1 to DS0 Channel System Mux system, nonrecurring charges.** The nonrecurring rates ordered for this element were $101.42, First and $71.62 Additional. (Docket No. 990649A, May 25, 2002 Order). MCI has proposed that these rates should be in Attachment 2, Exhibit A for this element and all combinations including this element. BellSouth has proposed rates of $127.59 First and $60.54 Additional for DS1 to DS0 Mux system nonrecurring charges. MCI requests the Commission require BellSouth to accept its previously ordered rates for this element.
2. **DS3 to DS1 Channel System Mux system, nonrecurring charges.** The nonrecurring rates ordered for this element were $199.28 First Installation and $118.64 Additional Installs, and $40.34 First Disconnect and $39.07 Additional Disconnections. (Docket No. 990649A, May 25, 2002 Order). MCI has proposed that these rates should be in Attachment 2, Exhibit A for this element and all combinations including this element. BellSouth has proposed rates of $115.60 First Installation, and $59.93 Additional and $5.45 First Disconnect and $0 Additional Disconnections, for DS3 to DS1 Mux system nonrecurring charges. MCI requests the Commission require BellSouth to accept its previously ordered rates for this element.

3. **DS1 COCI Line Cards, nonrecurring charges.** The nonrecurring rates ordered for this element in were $10.07, First and $7.08 Additional, with no disconnection charges. (Docket No. 990649A, May 25, 2002 Order.) MCI has proposed that these rates should be in Attachment 2, Exhibit A for this element and all combinations including this element. BellSouth has proposed rates of $12.16 First installation and $8.77 Additional installation, and $6.71 First disconnection and $4.84 Additional disconnection, for DS1 Line Card nonrecurring charges. MCI requests the Commission require BellSouth to accept its previously ordered rates for this element.

4. **Voice Grade & DS0 COCI Line Cards, nonrecurring charges.** The nonrecurring rates ordered for these elements were $10.07, First installation and $7.08 Additional installations, with no disconnection charges. (Docket No. 990649A, May 25, 2002.) MCI has proposed that these rates should be in Attachment 2, Exhibit A for these elements and all combinations including these elements. BellSouth has proposed rates of $12.16 First installation and $8.77 Additional installation, and $6.71 First disconnection and $4.84 Additional disconnection, for DS1 Line Card nonrecurring charges. MCI requests the Commission require BellSouth to accept its previously ordered rates for this element.

5. **Line Sharing Splitter in the Central Office.** MCI requests the rates ordered by the Commission for Line Sharing Splitter made available in a BellSouth central office (i.e. elements J.4.1, J.4.2, J.4.3, J.4.4, J.4.5 and J.4.6) be included in its interconnection agreement with BellSouth in accordance with the provisions set forth in the Commission's May and September 2002 orders in Docket 990649A.

In all of the above items, MCI simply proposes that the rates ordered by the Commission be included in its interconnection agreement with BellSouth. As such, the Commission should order BellSouth to accept its ordered rates for the above items in this arbitration and incorporate those rates into Attachment 2, Exhibit A, as appropriate.

ISSUE 9(A)

What rate should be applicable for the Bulk Migration process?

Q. HAS MCI RESOLVED THIS ARBITRATION ISSUE WITH BELLSOUTH?

A. Yes.

Q. WHAT WAS THE AGREED UPON RESOLUTION OF THIS ISSUE?

A. MCI has agreed to accept the rates ordered in Commission Docket 041338 to resolve this issue. These rates are reflected on Revised Exhibit GJD-2.

ISSUE 11

Under what terms and conditions shall the parties transition loops and transport that no longer will be provided as UNEs pursuant to Section 251 of the Act? (Attachment 2, Sections 2.1.7.12, 2.1.7.12.1, 6.2.4, 6.2.5, 6.2.11, 6.2.11., 6.2.12.2, 6.2.12.6.1.)

Q. WHY DIDN'T MCI ADDRESS THIS ISSUE IN ITS DIRECT TESTIMONY?

A. MCI thought it had reached a resolution with BellSouth on this issue and no dispute existed. Apparently, as evidenced by Ms. Tipton's Direct Testimony on this issue, MCI's belief that a resolution had been reached was either premature or incorrect.

Q. MS. TIPTON ARGUES IN HER DIRECT TESTIMONY THAT MCI MUST SUBMIT A SPREADSHEET TO BELLSOUTH BY DECEMBER 9, 2005 THAT IDENTIFIES THE UNE HIGH CAPACITY LOOP AND TRANSPORT SERVICES IN ITS EMBEDDED BASE THAT IT IS TERMINATING OR CONVERTING TO OTHER BELLSOUTH SERVICES. (TIPTON DIRECT, P. 18.) DOES MCI'S CURRENTLY EFFECTIVE INTERCONNECTION AGREEMENT WITH BELLSOUTH REQUIRE MCI TO PROVIDE BELLSOUTH WITH SUCH A SPREADSHEET BY DECEMBER 9, 2005?

A. No.

Q. DOES MCI'S CURRENT EFFECTIVE INTERCONNECTION AGREEMENT REQUIRE MCI TO PROVIDE BELLSOUTH WITH ANY SPREADSHEET IDENTIFYING UNE HIGH CAPACITY LOOP AND

TRANSPORT SERVICES IN ITS EMBEDDED BASE THAT IT IS TERMINATING OR CONVERTING TO OTHER BELLSOUTH SERVICES?

A. No.

Q. IS IT POSSIBLE FOR MCI TO PROVIDE BELLSOUTH WITH A DEFINITIVE LIST OF UNES THAT IT WILL TERMINATE OR CONVERT TO OTHER BELLSOUTH SERVICES AS A RESULT OF WIRE CENTERS BEING "DELISTED" (i.e. DETERMINED THAT IMPAIRMENT DOES NOT EXIST AND REMOVED FROM THE LIST OF WIRE CENTERS WHERE DS1, DS3 AND DARK FIBER UNEs ARE AVAILABLE AT TELRIC RATES)?

A. No. One simple reason why this cannot be done at this time is because MCI does not know which, if any, wire centers will be delisted. Another reason why this cannot be done at this time is because the issue of which UNEs are part of the unimpairment transition has not been resolved. (See my Direct and Rebuttal Testimony on Issue 3, concerning Attachment 2, Exhibit B.)

Q. IS THIS A CASE WHERE MCI SEEKS TO CONTINUE TO RECEIVE LOWER TELRIC BASED UNE RATES FOR SERVICES FOR AS LONG AS POSSIBLE?

A. No. It is possible that MCI will have not have any embedded base UNEs that it will terminate or convert to other BellSouth services as a result of wire centers being delisted. The vast majority of UNEs purchased by MCI from BellSouth are now covered by MCI's Commercial Agreement with BellSouth. ****Begin

proprietary information**** [redacted]

[redacted] *****End Proprietary Information*****

Q. AT PAGE 19 OF HER DIRECT MS. TIPTON SUBMITS THAT IF MCI FAILS TO SUBMIT A TIMELY SPREADSHEET THAT BELLSOUTH WILL IDENTIFY THE SUBJECT SERVICES AND TRANSITION THEN TO OTHER BELLSOUTH SERVICES AND MCI MUST PAY ALL APPLICABLE DISCONNECTION AND INSTALLATION CHARGES. IF BELLSOUTH WERE TO DO THIS WHAT WOULD BE THE RAMIFICATIONS?

A. MCI and BellSouth have an effective interconnection agreement. BellSouth is not permitted under that agreement to take any action to unilaterally disconnect any UNEs that MCI purchases from BellSouth because of its determinations that the services should be transitioned to other services. If BellSouth believes that it is no longer required to provide certain UNEs to MCI, its existing interconnection agreement with MCI provides it with a dispute resolution process that it may exert.

ISSUE 12

Should MCI be required to indemnify BellSouth for BellSouth's own negligent act committed in conjunction with BellSouth's provision of PBX Locate Service? (Attachment 2, Section 7.4.2.2.)

Q. MS. TIPTON CONTENDS THAT IT "VOLUNTARILY" OFFERS PBX LOCATE SERVICE AS A WHOLESALE SERVICE TO CLECS AND

MCI HAS NO LEGAL RIGHT TO BELLSOUTH'S 911 DATABASE CONTAINING SPECIFIC PBX LOCATE INFORMATION. (TIPTON DIRECT PP. 19-20.) IS BELLSOUTH OBLIGATED UNDER SECTION 251 OF THE ACT TO PROVIDE CLECS WITH ITS PBX LOCATE SERVICE?

A. Yes. In the *TRO*, the FCC found that CLECs are impaired nationwide without nondiscriminatory access to ILEC 911 database services.[12] BellSouth's PBX Locate offering would provide MCI with access to one of BellSouth's 911 databases and, as BellSouth admits, it is "provides this sort of service to its own retail end user customers through its Pinpoint service." (Tipton Direct, p. 19-20.) BellSouth thus is required by Section 251 of the Act and the FCC rules implementing the Act to provide CLECs with access to its PBX locate service under terms and conditions that are nondiscriminatory to that which it provides itself and at TELRIC complaint rates.

Q. IS MCI CURRENTLY DISPUTING THE RATES BELLSOUTH HAS PROPOSED FOR ITS 911 PBX LOCATE OFFERING?

A. No. MCI has currently accepted BellSouth proposed PBX Locate rates as interim but has reserved its right to dispute whether or not these charges are complaint with TELRIC in the future.

Q. SHOULD BELLSOUTH'S 911 LIMITATION OF LIABILITY BE EXTENDED TO THE UNES IT PROVIDES MCI?

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[12] See, *TRO*, ¶ 557 and 47 CFR §§51.307, 311 and 313.

A. No. Federal law requires that BellSouth's provision of telecommunications services must be just, reasonable and nondiscriminatory and there is no question that access to 911 databases is a telecommunications service.[13]

Q. ARE MANY OF THE SAME ARGUMENTS THAT YOU MAKE CONCERNING ISSUE 1 RELEVANT TO ISSUE 12?

A. Yes. The FCC determined that MCI is impaired without the ability to access to BellSouth's 911 databases, which means MCI does not have any viable alternatives for this information. For the same reasons I have discussed in connection with Issue 1 it is not reasonable to indemnify BellSouth from actions resulting from its negligence in conjunction with its provision of access to PBX Locate 911 databases to wholesale customers as UNEs.

Q. DOES THE INDEMNIFICATION AND LIMITATION OF LIABILITY LANUAGE CONTAINED IN MCI'S CURRENTLY EFFECTIVE INTERCONNECTION AGREEMENT WITH BELLSOUTH ADDRESS THE USE OF AND PROVISION OF ACCESS TO 911 DATABASES?

A. Yes.

Q. WOULD MCI ACCEPT THE INDEMNIFICATION AND LIMITATION OF LIABILITY LANGUAGE CONTAINED IN ITS CURRENTLY EFFECTIVE INTERCONNECTION AGREEMENT WITH BELLSOUTH AS A RESOLUTION TO ISSUE 12?

A. Yes.

[13] See, 47 CFR §§ 201 and 251.

BILLING

ISSUE 32

What charges, if any, should be imposed for records changes made by the parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (Attachment 7, Section 1.14.1; Pricing Attachment.)

Q. BELLSOUTH ARGUES THAT UNE CUSTOMERS CANNOT CHANGE THEIR NAME WITHOUT BEING SUBJECT TO UNREGULATED CHARGES IT MAY SEEK TO IMPOSE. (OWENS DIRECT, PP. 7-9.) DO YOU AGREE?

A. No. UNEs cannot be provisioned unless BellSouth knows the name of the entity to which to provision them. Name changes have been a normal business activity in the past, are a normal business activity now and will be a normal business activity in the future. Name changes are an integral part of doing business and cannot be separated from the provisioning and ordering requirements that apply to UNEs.

Q. DO BELLSOUTH'S CURRENT UNE RATES INCLUDE THE COST OF MAKING NAME CHANGES?

A. Yes. BellSouth's costs in this regard were not excluded from the cost used to establish its unbundled network element rates. These costs are included and captured by BellSouth in 47 C.F.R. Part 32 Account 6623 and BellSouth's

historical costs in this account were used to develop all of BellSouth's existing UNE rates.[14]

Q. MR. OWENS ARGUES THAT THE COST CAUSER SHOULD BE RESPONSIBLE FOR THE COST OF THE CHANGES. (OWENS DIRECT, P. 8.) DO YOU AGREE?

A. Yes.

Q. MR. OWENS STATES THAT "THE WORK REQUIRED FOR THIS PROCESS" IS NOT "INCLUDED IN THE NON-RECURRING OR RECURRING COST OF THE ASSETS BEING CHANGED." (OWENS DIRECT, P. 11.) DO YOU AGREE?

A. No. I would agree with Mr. Owens that work required for the process used to perform name changes should not included in the **cost** of the assets being changed. The **cost** of the assets being changed should only reflect the un-depreciated investment of the assets. The work required for the process used to perform name changes should be booked as an expense and should not be included in the cost of the assets. Expense is not an asset. However, Mr. Owens appears to be arguing that the cost of the processes BellSouth must undertake to change a name for a customer is not included in the **rates** for the UNEs being changed. That is not correct. BellSouth's cost of performing name changes for CLECs was not removed from the data used to develop the factors applied to all

[14] *See*, Revised Direct Testimony of Ms. D. Daonne Caldwell, filed on Behalf of BellSouth on August 18, 2000, Exhibit DDC-1 (CD ROM), Docket 990649, Appendix F, EXPPRJ00.xls and EXPPRJ00.doc, USOA 6623.

UNE rates, including the rates for the UNEs being changed. BellSouth's cost of performing name changes for CLECs is therefore included in all of BellSouth's current UNE rates. What is true, however, is because cost for this activity was spread equally on all UNEs certain cost causers may not be incurring the full cost that they are causing through current UNE rates.

Q. HOW COULD COST CAUSERS IN THIS REGARD NOT BE INCURRING THE FULL COST THEY CAUSE THROUGH CURRENT UNE RATES?

A. BellSouth's forward-looking cost of performing name changes is spread equally to all UNEs. Therefore, even if a CLEC never requests a name change it is paying what the Commission determined to be BellSouth forward looking cost to perform name changes through its UNE rates. In addition, a CLEC that requests name changes more often than the industry average is actually paying less than the cost it causes through existing UNE rates.

Q. HOW CAN THIS INEQUITY BE REMEDIED?

A. The forward-looking cost of performing name changes would have to be removed from the current UNE rates and then separate TELRIC complaint rates could be established for the specific and separate service rearrangement charges that BellSouth advocates. However, until this occurs, no separate charges for service rearrangements caused by name changes should be permitted.

ISSUE 33

How should the rate for the calculation of late payments be determined? (Attachment 7, Section 1.17.)

Q. DOES MS. TIPTON GIVE ANY VALID REASON FOR BELLSOUTH'S POSITION THAT IT SHOULD BE ABLE TO DETERMINE THE INTEREST RATE FOR LATE PAYMENTS UNILATERALLY BY INCLUDING A RATE IN ITS TARIFF?

A. No. As I explained in my Direct Testimony, the late payment rate should be set forth in the ICA, not unilaterally by BellSouth in its tariff. MCI proposes that the interest rate that should be applied to late payments should be eighteen (18) percent, or the legal cap whichever is lower.

ISSUE 34

What terms and conditions apply to:
(A) nonpayment of past due billings and additional amounts that become past due during any suspension?
(B) Nonpayment of a requested deposit?

Q. MS. TIPTON STATES THAT "UNDER MCI'S PROPOSED LANGUAGE BELLSOUTH WOULD BE LIMITED TO COLLECTING ONLY THE AMOUNT THAT WAS STATED IN THE PAST DUE LETTER REGARDLESS OF MCI'S PAYMENT PERFORMANCE FOR SUBSEQUENT BILL CYCLES." (TIPTON DIRECT, P. 35.) IS THIS ACCURATE?

A. No. The agreed upon language of Section 1.19.2 provides BellSouth the right to suspend, discontinue or terminate service to MCI to the extent necessary to prevent the unlawful use or misuse of BellSouth facilities or service or to the extent MCI fails to pay any nondisputed amounts due on said account.

Q. MS. TIPTON STATES THAT THE FLORIDA COMMISSION RECENTLY "APPROVED THE SAME POSITION ADVANCED BY BELLSOUTH IN THIS DOCKET" IN THIS REGARD. (TIPTON DIRECT, P. 41) IS THIS ACCURATE?

A. No.

Q. WHAT IS THE DIFFERENCE BETWEEN WHAT THE COMMISSION DECIDED IN THE FLORIDA JOINT PETITIONER ORDER AND WHAT BELLSOUTH IS PROPOSING IN THIS ARBITRATION?

A. In its Florida Joint Petitioner Order the Commission found that a CLEC shall be required to pay past due **undisputed** amounts in additional to those specified in BellSouth's notice of suspension or termination for nonpayment.[15] The dispute between MCI and BellSouth in this arbitration does not concern the terms and conditions for payment of ***undisputed*** amounts. Rather, the dispute concerns whether or not BellSouth should be permitted to suspend or terminate service to MCI for nonpayment of ***disputed*** bills. As I stated in my Direct Testimony, it is unreasonable to permit BellSouth to suspend or terminate service should MCI dispute a bill and not pay the bill while the dispute is pending. If BellSouth were permitted to terminate service to MCI for nonpayment of a disputed bill,

[15] Florida Joint Petitioner Order, p. 66.

BellSouth could bill MCI whatever it wanted and MCI would have to pay the bill no matter how egregiously incorrect the bill or face BellSouth terminating its services.

Q. MS. TIPTON STATES THAT BELLSOUTH SHOULD NOT BE EXPECTED TO INCUR ANY ADDITIONAL FINANCIAL RISK AS A RESULT OF MCI'S FAILURE TO HONOR ITS UNDISPUTED DEPOSIT OBLIGATIONS. (TIPTON DIRECT, P. 43.) DOES MCI'S CURRENT ICA WITH BELLSOUTH REQUIRE IT TO PROVIDE BELLSOUTH WITH A DEPOSIT?

A. No. As such, MCI proposed ICA language does not cause BellSouth to incur any additional financial risk.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

4. **Liability and Indemnification**

4.1. Liability for Acts or Omissions of Third Parties. Neither Party shall be liable to the other Party for any act or omission of another Telecommunications company providing services to the other Party.

With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MCIm, any MCIm customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by MCIm, any MCIm customer or any other person or entity shall not be subject to such limitation of liability when such claims result from the 1) gross negligence or willful misconduct (including intentional torts) of BellSouth; or 2) BellSouth's refusal to comply with the terms of this Agreement, provided that BellSouth's actions or inactions based upon a reasonable and good-faith interpretation of the terms of this Agreement shall not be deemed a refusal to comply. In addition, nothing in this Section shall be interpreted to limit the remedies, if any, provided for in Attachment 9 of this Agreement.

Deleted: Except for any indemnification obligations of the Parties hereunder, and except in cases of the provisioning Party's gross negligence or willful misconduct, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in *its performance of this Agreement*, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed

5.2. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by MCIm pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, MCIm's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity shall not be subject to such limitation of liability when such claims result from the 1) gross negligence or willful misconduct (including intentional torts) of MCIm; or 2) MCIm's refusal to comply with the terms of this Agreement, provided that MCIm's actions or inactions,

based upon a reasonable and good-faith interpretation of the terms of this Agreement, shall not be deemed a refusal to comply. In addition, nothing in this Section shall be interpreted to limit the remedies, if any, provided for in Attachment 9 of this Agreement.

5.3.

5.4. Neither BellSouth nor MCI shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

5.5.

5.6. To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

5.7. Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

5.8. Promptly after receipt of notice of any claim or the commencement of any action for which a Party may seek indemnification pursuant to this Agreement, such Party (the "Indemnified Party") shall provide written notice within a commercially reasonable timeframe to the other Party (the "Indemnifying Party") of such claim or action, but the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent the Indemnifying Party has actually been prejudiced thereby. The Indemnifying Party shall be obligated to assume the defense of such claim, at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party's reasonable requests for assistance or information relating to such claim, at the Indemnifying Party's expense. The Indemnified Party shall have the right to participate in the investigation and defense of such claim or action, with separate counsel chosen and paid for by the Indemnified Party. Unless the Indemnified Party chooses to waive its rights to be indemnified further in any claim or action, the Indemnified Party's counsel shall not interfere with the defense strategy chosen by the Indemnifying Party and its counsel, and the Indemnified Party's counsel shall not raise any claims, defenses, or objections or otherwise take a course of action in representation of the Indemnified Party when such course of action might be in conflict with a course of action or inaction chosen by the Indemnifying Party. The Indemnifying Party is not liable under this Agreement for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the Indemnified Party has tendered the defense of the claim, demand, or lawsuit to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

Deleted: Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability *that such other Party included in its* own tariffs at the time of such loss

Deleted: Under no circumstance shall a Party be responsible or liable for *indirect, incidental, or consequential* damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or *facilities described in this Agreement*, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses

5.9. Disclaimer. EXCEPT AS OTHERWISE PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

5.10 All rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by the other Party of any provision of this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions of this Agreement. Nothing contained in this section 5.10 will allow either Party to circumvent the Dispute Resolution provisions set forth in Section 8 below.

5.11 The Party providing services under this Agreement, its Affiliates and its parent company shall be indemnified, defended and held harmless by the Party receiving such services against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement, involving: 1) claims for libel, slander, invasion of privacy or copyright infringement arising from the content of the receiving Party's own communications; 2) any claim, loss, or damage claimed by the receiving Party's customer(s) arising from such customer's use of any service, including 911/E911, that the customer has obtained from the receiving Party and that the receiving Party has obtained from the supplying Party under this Agreement; or 3) all other claims arising out of an act or omission of the receiving Party in the course of using services provided pursuant to this Agreement. Notwithstanding the foregoing, to the extent that a claim, loss or damage is caused by the gross negligence or willful misconduct of a supplying Party the receiving Party shall have no obligation to indemnify, defend and hold harmless the supplying Party hereunder. Nothing herein is intended to modify or alter in any way the indemnification obligations set forth in Section 6, infra, relating to intellectual property infringement.

5.12 Promptly after receipt of notice of any claim or the commencement of any action for which a Party may seek indemnification pursuant to this Section, such Party (the "Indemnified Party") shall promptly give written notice to the other Party (the "Indemnifying Party") of such claim or action, but the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent the Indemnifying Party has actually been prejudiced

thereby. The Indemnifying Party shall be obligated to assume the defense of such claim, at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party's reasonable requests for assistance or information relating to such claim, at the Indemnifying Party's expense. The Indemnified Party shall have the right to participate in the investigation and defense of such claim or action, with separate counsel chosen and paid for by the Indemnified Party. Unless the Indemnified Party chooses to waive its rights to be indemnified further in any claim or action, the Indemnified Party's counsel shall not interfere with the defense strategy chosen by the Indemnifying Party and its counsel, and the Indemnified Party's counsel shall not raise any claims, defenses, or objections or otherwise take a course of action in representation of the Indemnified Party when such course of action might be in conflict with a course of action or inaction chosen by the Indemnifying Party. The Indemnifying Party is not liable under this Section 11 for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the Indemnified Party has tendered the defense of the claim, demand, or lawsuit to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

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