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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF PAM TIPTON
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 050419-TP
DECEMBER 1, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Pam Tipton. I am employed by BellSouth Telecommunications, Inc., as a Director, Regulatory and External Affairs, responsible for regulatory policy implementation in BellSouth's nine-state region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed Direct Testimony on October 21, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony responds to portions of the Direct Testimony filed on October 21, 2005 by Greg Darnell, Dennis L. Ricca, and

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1 Michael L. Lehmkuhl, all on behalf of MCImetro Access Transmission
2 Services, LLC ("MCI").

3
4 **Issue 1: What Language Should Be Included In The Parties'**
5 **Interconnection Agreement ("Agreement") To Limit Or Eliminate, (A)**
6 **Liability In General; (B) Liability Arising From Tariffs Or Contracts With**
7 **End Users; Or (C) Liability For Indirect, Incidental Or Consequential**
8 **Damages?**

9
10 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 1(A)?

11
12 A. The limitation on each Party's liability in circumstances other than gross
13 negligence or willful misconduct should be the industry standard
14 limitation, which is a credit for the actual cost of the services or
15 functions not performed or improperly performed. This is the same
16 standard that both MCI and BellSouth use to limit their liability to their
17 end users in their tariffs, contracts, and price lists and used by MCI in
18 its customer service agreements and tariffs.¹ This is also the same
19 standard that this and other state commissions have ruled should
20 govern in the recently concluded Joint Petitioner arbitrations.²

21
22 Q. CAN YOU ADDRESS MR. DARNELL'S GENERAL POSITION ON

¹ See Exhibit PAT-1 attached to my direct testimony; MCI General Service Agreement at p23; MCI Florida Tariff at Section 2.1.4.9; BellSouth Florida GSST Section A2.5.1.

² See FPSC Order No. PSC-05-0975-FOF-TP, decision at p8 (Oct. 11, 2005) ("*Florida JP Order*"); North Carolina Utility Commission *Recommended Arbitration Order*, Docket P-772, Sub 8 et al, issued July 26, 2005, at p11 ("*North Carolina JP Order*"); Kentucky Public Service Commission *Order*, Case No. 2004-00044 at 3 (Sept. 26, 2005) ("*Kentucky JP Order*").

1 THIS ISSUE AND RESPOND TO HIS ARGUMENTS?

2

3 A. Yes. MCI's general position is that there should be no limitation of
4 liability in this agreement. This standard is inappropriate for several
5 reasons.

6

7 First, BellSouth is unaware of any interconnection agreement that
8 contains no limitation of liability protections. Indeed, as stated above,
9 the applicable standard as determined by multiple state commissions
10 as well as the Wireline Competition Bureau of the Federal
11 Communications Commission ("FCC") is bill credits.³ MCI also uses bill
12 credits to limit its liability to its customers. Thus, BellSouth is at a loss
13 as to why this same standard – the standard that applies to MCI's
14 Florida end users – is not appropriate here.

15

16 Second, MCI's current interconnection agreement with BellSouth limits
17 each party's liability to bill credits. See Current Agreement, General
18 Terms and Conditions, Part A, at § 11.1, attached hereto as Exhibit
19 PAT—2, Mr. Darnell provides no rational basis for why this standard
20 should change now.

21

22 Third, BellSouth's Unbundled Network Element ("UNE") rates do not

³ *In the Matter of 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*, CC Docket No. 00-218, 17 FCC Rcd. 27,039 (Jul. 17, 2002) ("Virginia Arbitration Order") at ¶ 709.

1 take into account the potential of having unlimited liability for services
2 provided to MCI.

3

4 Q. PLEASE EXPLAIN WHY BELLSOUTH'S UNE PRICES DO NOT
5 INCLUDE, OR ACCOMMODATE, POTENTIAL COSTS ASSOCIATED
6 WITH UNLIMITED LIABILITY CLAIMS.

7

8 A. Unlimited liability expenses could hypothetically be included in a
9 TELRIC study through the shared and common cost factors. However,
10 these expenses were not included in BellSouth's TELRIC cost studies
11 for two reasons. First, shared and common cost factors are developed
12 using actual historical expenses. Because BellSouth's tariffs and
13 interconnection agreements have historically limited BellSouth's liability
14 to bill credits, BellSouth would not have incurred expenses related to a
15 claim based on unlimited liability with a CLEC. Thus, these expenses,
16 as a practical matter, would not be included in shared and common
17 costs.

18

19 Second, in developing the shared and common cost factors, atypical,
20 significant cost items, like hurricane expenses or SEEM payments, are
21 excluded. An unlimited CLEC damage claim, if one ever existed, would
22 be considered an atypical, significant expense and thus would likely be
23 excluded from the expenses used to develop shared and common cost
24 factors.

25

1 Accordingly, adopting MCI's position would require BellSouth's UNE
2 costs to be increased to take into account this unlimited, non-standard,
3 and unprecedented risk. The more rational approach would be for this
4 Commission to reaffirm its previous ruling and adopt the industry
5 standard limitation of bill credits.

6

7 Q. CAN YOU ADDRESS MR. DARNELL'S ARGUMENT THAT MCI'S
8 PROPOSAL SHOULD BE ADOPTED BECAUSE BELLSOUTH MAY
9 REFUSE TO IMPROVE ITS WHOLESALE PROVISIONING
10 PERFORMANCE BECAUSE BELLSOUTH IS NOT RESPONSIBLE
11 FOR LOST PROFITS (PAGE 6).

12

13 A. Mr. Darnell's statements are pure speculation and cannot be reconciled
14 with the undisputed facts. SEEM payments are in addition to any bill
15 credits BellSouth provided MCI for BellSouth's failure to perform under
16 the current interconnection agreement.

17

18 Further, as stated in my Direct Testimony, even in MCI's own tariffs and
19 contracts, MCI has no liability for the actions of a third-party provider
20 like BellSouth. See Exhibit PAT-1 as filed with my direct testimony,
21 MCI General Service Agreement at § VI (G); MCI FL Tariff at § 2.1.4.9.
22 Thus, if MCI enforces this provision or even provides its customer with
23 bill credits pursuant to its tariff or contract because of a BellSouth error,
24 MCI is made substantially whole. Accordingly, continuing the industry

1 standard of not having either party liable for lost profits and limiting such
2 liability to bill credits does not harm MCI.

3

4 Q. CAN YOU ADDRESS MR. DARNELL'S STATEMENT THAT THE
5 EXCEPTION TO LIMITATION OF LIABILITY FOR GROSS
6 NEGLIGENCE OR WILLFUL MISCONDUNCT SHOULD APPLY TO
7 BOTH PARTIES?

8

9 A. Yes. Mr. Darnell's only specific objection to BellSouth's language for
10 Issue No. 1(a) is that the exclusion of bill credits for gross negligence
11 and willful misconduct should apply to both the Providing party and the
12 Receiving party. BellSouth agrees and will modify its proposed
13 language accordingly. Thus, Mr. Darnell's sole specific concern is now
14 addressed by BellSouth.

15

16 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 1 (B)?

17

18 A. The purpose of this Issue is to protect BellSouth in the event MCI
19 chooses not to limit liability to its end users. BellSouth's proposed
20 language puts BellSouth in the same position that it would be in if the
21 MCI end user was a BellSouth end user. If MCI's customer was a
22 BellSouth customer, BellSouth's liability would be limited to bill credits
23 (the industry standard) as set forth in BellSouth's tariff. BellSouth
24 should not experience any additional risks simply because it is the
25 wholesale supplier to MCI. Simply put, if MCI elects not to limit its

1 liability to its end users/customers in accordance with industry norms,
2 MCI should bear the risk of loss arising from that business decision and
3 not pass this risk to its wholesale suppliers. As stated in my Direct
4 Testimony, three state commissions, including this Commission, agree
5 with BellSouth's position.⁴

6
7 Q. CAN YOU ADDRESS MR. DARNELL'S SOLE CONCERN FOR THIS
8 ISSUE?

9
10 A. Yes. In support of MCI's position for Issue 1(B), Mr. Darnell states that
11 MCI "should not have to indemnify BellSouth for 'any loss to or arising
12 from this agreement whether in contract, tort, or otherwise" **caused by**
13 end users or third parties" (emphasis added). Direct at 5. This
14 statement mischaracterizes BellSouth's language.

15
16 Specifically, the language partially quoted by Mr. Darnell does not deal
17 with indemnification obligations of MCI for the actions by end users or
18 third parties. Significantly, the parties have already agreed to specific
19 indemnification language to address this scenario. See GTCs at § 5.7.
20 Rather, the provision in dispute relates to MCI's obligations to BellSouth
21 in the event MCI makes the business decision to not limit its liability
22 within industry standards and BellSouth suffers a loss as a result of that
23 decision. Accordingly, Mr. Darnell's attempt to discredit BellSouth's

⁴ See *Florida Order* at p9-10; *North Carolina Order* at p13; *Kentucky Order* at 4.

1 language should be rejected.

2

3 Of some significance to this issue, however, Mr. Darnell's testimony
4 does provide that "[n]either party to the Agreement . . . has any
5 ownership or control concerning the actions of end users, particularly
6 regarding intentional torts or other wrongdoing." Direct at 4-5. This is
7 certainly true for BellSouth. Unlike MCI who can limit its liabilities to its
8 end users, BellSouth has no control over the actions of an MCI end
9 user. That end user is not purchasing services from BellSouth, is not
10 under contract with BellSouth, and is not subject to BellSouth's tariff
11 provision. Mr. Darnell's admission that BellSouth has no means to limit
12 its liability to MCI's end users lends further support to BellSouth's
13 position.

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON ISSUE 1 (C)?

16

17 A. Indirect, incidental or consequential damages should be defined
18 according to the pertinent state law. Although I am not an attorney, I
19 understand that, in every state, there is a body of law that has
20 developed as the courts have defined the parameters of what
21 constitutes "indirect, incidental or consequential damages." This
22 definition should control and apply to the parties in the context of this
23 interconnection agreement. Significantly, three state commissions,
24 including this Commission, agree.⁵

⁵ See *Florida Order* at p11; *North Carolina Order* at 15; *Kentucky Order* at 5.

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Q. DOES MCI EXPOSE ITSELF TO INDIRECT, CONSEQUENTIAL, AND INCIDENTAL DAMAGES TO ITS END USERS?

A. No. In its tariffs and customer service agreements, MCI specifically states that they will not be liable to its end users for indirect, consequential, and incidental damages. See Exhibit PAT-1, MCI FL Tariff at 2.1.4.1; MCI Customer Service Agreement at 24. Specifically, the provision addressing this issue in its Customer Service Agreement states, verbatim:

IN NO EVENT WILL THE COMPANY BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE LOSS OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS (WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES) BY REASON OF ANY ACT OR OMISSION IN ITS PERFORMANCE UNDER THIS AGREEMENT.

BellSouth is simply asking that the same limitations that MCI imposes on its own end users regarding indirect, consequential, and incidental damages apply here as well. That is, the Commission should find that neither party should be liable for indirect, consequential, and incidental damages.

1 Q. DO BELLSOUTH'S UNE RATES TAKE INTO ACCOUNT THAT
2 BELLSOUTH COULD BE LIABLE FOR INDIRECT, CONSEQUENTIAL,
3 OR INCIDENTAL DAMAGES.

4

5 A. No. BellSouth's UNE rates do not include the risk that BellSouth could
6 be liable for that are associated with such costs under an Agreement for
7 the same reasons that I explain in my answer on page 4. To adopt
8 MCI's position would require the Commission to increase BellSouth's
9 UNE rates to take into account this increased liability.

10

11 Q. CAN YOU PLEASE ADDRESS MR. DARNELL'S SOLE CONCERN
12 FOR THIS ISSUE?

13

14 A. Mr. Darnell's sole critique of BellSouth's language for this issue is that
15 "BellSouth proposes that 'under no circumstances' shall a party be
16 liable for damages arising from the use or equipment or software. . . ."
17 Darnell Direct at 5. Although BellSouth does not agree with Mr.
18 Darnell's statements, BellSouth will agree to modify its language to
19 delete the objected-to phrase to address his concerns. Thus,
20 BellSouth's proposed language for Section 5.5 now reads:

21

22 Under no circumstances shall a Party be
23 responsible or liable for indirect, incidental, or
24 consequential damages. In connection with this
25 limitation of liability, each Party recognizes that the
26 other Party may, from time to time, provide advice,
27 make recommendations, or supply other analysis
28 related to the services or facilities described in this

1 Agreement, and, while each Party shall use diligent
2 efforts in this regard, the Parties acknowledge and
3 agree that this limitation of liability shall apply to
4 provision of such advice, recommendations, and
5 analysis.
6

7

8 ***Issue 2: What Terms Or Conditions, If Any, Should Be Included In The***
9 ***Agreement Regarding The Appropriate Forum To Address Disputes?***

10

11 Q. WHAT IS BELL SOUTH'S POSITION FOR THIS ISSUE?

12

13 A. BellSouth believes that the Commission should resolve disputes within
14 its expertise and jurisdiction. While not adopting BellSouth's express
15 language in the Joint Petitioner arbitration, this Commission
16 acknowledged that it "has primary jurisdiction over most disputes
17 arising from interconnection agreements and that a petition filed in an
18 improper forum would ultimately be subject to being dismissed or held
19 in abeyance while [the Commission] addressed matters within [its]
20 jurisdiction."⁶ BellSouth will abide by this decision here if the
21 Commission is not inclined to revisit its decision.

22

23 If, however, the Commission is inclined to revisit this issue, BellSouth
24 stands by and refers the Commission to its Direct Testimony as to why
25 the Commission should require CLECs to first bring disputes to the
26 Commission regarding the interpretation or enforcement of
27 interconnection agreements that it approves pursuant to the

⁶ Florida Joint Petitioner Arbitration Order at p. 15.

1 Telecommunications Act of 1996 (the "Act"), prior to involving other
2 regulatory or judicial bodies.

3

4 Q. HAS ANY OTHER STATE COMMISSION RECENTLY ADDRESSED
5 THIS ISSUE?

6

7 A. The Kentucky Commission adopted BellSouth's position in the Joint
8 Petitioner arbitration, holding "[t]he Commission finds that this
9 Commission has primary jurisdiction over issues regarding the
10 interpretation and implementation of interconnection agreements
11 approved by this Commission. As such, disputes arising under such
12 interconnection agreements must be brought before this Commission
13 before they proceed to a court of general jurisdiction."⁷

14

15 ***Issue 3: What Rates, Terms, And Conditions For The Disputed Rate***
16 ***Elements In Attachment 2 Should Be Incorporated Into The Agreement?***

17

18 Q. WHAT DISPUTES ARE ENCOMPASSED WITHIN THIS ISSUE?

19

20 A. This Issue encompasses several different miscellaneous rate disputes.
21 Mr. Fogle addresses one of these disputes involving HDSL-compatible
22 loops in his testimony. I, however, along with Mr. Shell will address the
23 remaining rate disputes identified by Mr. Darnell in its Direct Testimony
24 for this Issue.

⁷ Kentucky Joint Petitioner Arbitration Order at p. 7.

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Q. DO YOU HAVE ANY COMMENTS REGARDING SOME OF THE DISPUTES IDENTIFIED BY MCI?

A. Yes. The parties have resolved several of the disputes identified by Mr. Darnell in his testimony, including: (1) rates for Network Interface Devices (“NIDs”); (2) rates for 2 wire and 4 wire voice grade loops, 56 kbps and 64 kbps, and ISDN Loops, and in interoffice transport in Exhibit B; (3) Synchronet; (4) EODUF Resale rates; and (5) multiplexing and voice grade line cards. Mr. Shell will address the remaining rate disputes in his testimony.

Issue 11: (A2) By When Should MCI Be Required To Identify Those UNE Services In Its Embedded Base That It Is Required To Disconnect Or Convert To Other Bellsouth Services In An Unimpaired Wire Center? (A3) If MCI Does Not Identify The Subject Services Within The Specified Period Of Time Identified In (A2), What Rates, Terms, And Conditions Apply?

Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

A. To the extent the Commission’s Generic Proceeding addresses these discrete issues, and assuming no separate agreement to the contrary, the Commission’s ruling in the Generic Proceeding should govern. Nevertheless, in an abundance of caution and to ensure an orderly transition for de-listed UNEs, BellSouth proposes the following:

1 As to subpart (A2), to initiate the transition process, MCI must submit a
2 spreadsheet to BellSouth by December 9, 2005 that identifies the UNE
3 high capacity loop and transport services in its Embedded Base (i.e.,
4 the high capacity loop and transport UNEs that are served from wire
5 centers that meet the FCC's non-impairment thresholds), that it is
6 terminating or converting to other BellSouth services. BellSouth will
7 then work with MCI to establish a project schedule that ensures
8 completion of conversion and/or disconnection of those former UNEs by
9 the end of the transition period (March 10, 2006). BellSouth will make
10 any such conversions at the switch-as-is rate.

11

12 As clarification, BellSouth is not proposing that it will begin issuing
13 conversion orders on December 9, 2005. Instead, BellSouth proposes
14 the process of identifying the Embedded Base begin no later than
15 December 9, 2005 to ensure adequate time to complete the transition
16 process in an orderly fashion, up to and including March 10, 2006. If
17 this information is not provided to BellSouth by December 9, 2005, the
18 ultimate risk is that BellSouth will not be able to work with MCI to
19 effectuate the necessary changes by the deadline imposed by the FCC.

20

21 Regarding subpart (A3), should MCI fail to timely submit a
22 spreadsheet(s) as set forth in subpart (A2) above, BellSouth will identify
23 the subject services and transition them to other BellSouth services.
24 MCI must pay all applicable disconnection and installation nonrecurring
25 charges associated with transitioning de-listed UNEs. BellSouth is

1 concerned that, without the imposition of these full, nonrecurring
2 charges past a date certain, CLECs will delay complying with the law.

3

4 Q. CAN YOU ADDRESS MR. DARNELL'S STATEMENT REGARDING
5 THE IDENTIFICATION OF SUBSEQUENT UNIMPAIRED WIRE
6 CENTERS?

7

8 A. Yes. The parties have resolved this dispute.

9

10 ***Issue 12: Should MCI Be Required To Indemnify BellSouth For***
11 ***BellSouth's Own Negligent Act Committed In Conjunction With***
12 ***BellSouth's Provision Of PBX Locate Service?***

13

14 Q. CAN YOU PLEASE DESCRIBE THE ISSUE?

15

16 A. The issue for the Commission's consideration is not whether or how
17 BellSouth should provide this service; rather, it is a liability issue.
18 BellSouth fulfills its obligation to provide CLECs with access to its 911
19 database and that obligation is not in dispute here. However, BellSouth
20 has no mandatory requirement to offer, as part of BellSouth's obligation
21 to provide 911 service in general, the specific PBX Locate Service. It is
22 something that BellSouth offers on a voluntary basis. The issue is
23 whether MCI, when it purchases BellSouth's PBX Locate service,
24 should be subject to the same indemnification obligations that
25 BellSouth's retail customers are subject to when purchasing BellSouth's
26 retail service equivalent, PinPoint service.

1

2 Q. WHAT IS BELLSOUTH'S POSITION?

3

4 A. MCI should obtain the service pursuant to the same terms and
5 conditions in its tariff that apply to BellSouth's PinPoint retail customers,
6 including the retail customers' indemnification obligations.

7

8 Q. CAN YOU ADDRESS MR. DARNELL'S OBJECTION TO
9 BELLSOUTH'S PROPOSED LANGUAGE?

10

11 A. It appears that Mr. Darnell's sole objection to BellSouth's language and
12 position is that MCI should not be required to indemnify BellSouth for its
13 own negligence. Darnell Direct at 32. However, BellSouth's retail
14 PinPoint customers are subject to an almost identical obligation. See
15 BellSouth GSST at § A24.2.2(K), attached as Exhibit PAT—3. This
16 indemnification obligation and the requested obligation here both simply
17 recognize that service providers should be protected from liability.

18

19 Further, contrary to his argument, MCI has proposed no alternative
20 language for this issue, including any language that would exempt any
21 indemnification obligation for BellSouth's negligent acts as the PBX
22 Locate service provider. Accordingly, MCI is opposed to indemnifying
23 BellSouth even in the instance where MCI's negligence solely caused
24 harm to an end user. And, as admitted by Mr. Darnell, such a scenario
25 is not far fetched because BellSouth relies on information provided by

1 "MCI's end users or end user's database management" for the
2 provision of the MCI "end user's PBX station numbers and
3 corresponding address and location data. . . ." Direct at 32. Thus, if
4 BellSouth receives incorrect information from MCI or its agent, MCI
5 would still not be willing to indemnify BellSouth for damages it suffers
6 solely as a result of MCI's negligence.

7
8 Simply put, if MCI wants to purchase BellSouth's voluntarily offered
9 PBX Locate service then MCI should be in no better position than
10 BellSouth's retail customers.

11
12

13 ***Issue 17: (A) To What Extent Should The Definition Of Local Traffic***
14 ***Allow For The Origination And Termination Of Traffic In Two Different***
15 ***LATAs?, (B) Should Traffic Be Jurisdictionally Based On The Actual***
16 ***Physical Location Of The Calling And Called Parties, Or Based On The***
17 ***Originating And Terminating NPA/NXX?, (C) Should Local Traffic Include***
18 ***Optional Extended Calling Plans As Set Forth In The Originating Party's***
19 ***Tariff, Or Only Non-Optional Extended Calling Plans (Such As Extended***
20 ***Area Service ("EAS"))?***

21

22 Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT MCI'S
23 POSITION?

24

25 A. Yes. The general theme underlying MCI's position throughout Issue
26 No. 17 is to establish a completely inequitable arrangement wherein
27 MCI avoids paying BellSouth access charges in any case while
28 requiring BellSouth to pay MCI these charges in most cases.
29 Specifically, MCI takes the position that, when their customer originates

1 a call that terminates to a BellSouth end user, regardless of the physical
2 end points of the call, the call should be treated as local for intercarrier
3 compensation purposes. MCI also takes the position that BellSouth
4 should pay access charges to MCI for any call originated by a BellSouth
5 end user that terminates to an MCI end user outside the basic local
6 calling area of the customer but within the LATA.

7
8 MCI is essentially asking this Commission to establish two different
9 compensation regimes--One for BellSouth that requires it to pay MCI
10 access charges for any call that it terminates to MCI outside the basic
11 local calling area, and yet another regime that does **not** require MCI to
12 pay BellSouth access charges in any instance, including when the MCI
13 customer makes an intraLATA, interLATA, or even an interstate call.

14
15 **Issue 17a**

16
17 Q. IS MR. RICCA CORRECT WHEN HE STATES ON PAGE 14 THAT
18 "[T]HERE IS NO REASON TO REQUIRE THAT LOCAL CALLING
19 AREAS NOT CROSS LATA BOUNDARIES."

20
21 A. No, he is not correct for several reasons. First, BellSouth is prohibited
22 as a matter of law from offering interLATA local service. Thus, MCI's
23 position is not reciprocal and will only result in disparate intercarrier
24 compensation treatment between the parties for the same types of call.
25 That is, if MCI's position is adopted, MCI could define its local calling

1 area as the entire state or the entire country and thus avoid paying
2 BellSouth any access charges when BellSouth terminates an interLATA
3 or interstate call sent by an MCI end user. Conversely, because
4 BellSouth cannot define its local calling area as anything greater than
5 the LATA, BellSouth would owe MCI access charges for the same call.

6
7 Second, Mr. Ricca's testimony conflicts with MCI's previous admission
8 in a North Carolina Proceeding that a call that crosses a LATA cannot
9 be considered local. See *NCUC Order Ruling On Objections*, Docket
10 No. P-474, Sub 10 at 28 (Aug. 2, 2001).

11
12 Third, MCI's proposal would allow an interstate call to be considered
13 local for intercarrier compensation purposes. Such a result conflicts
14 with FCC rules, which provide that access charges apply to interstate
15 calls. See 47 C.F.R. § 69.1(a), 69.2.

16
17 Fourth, reciprocal compensation obligations apply only to local traffic. *In*
18 *the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC
19 Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-
20 131 (rel. Apr. 27, 2001) at ¶ 24. Therefore, reciprocal compensation
21 should not be applied to interstate calls, interLATA calls, or intraLATA
22 calls that are not local calls.

23
24 For all these reasons, the Commission should reject MCI's arguments
25 and find that the definition of local calling area should not exceed a

1 LATA.

2

3 **Issue 17b**

4

5 Q. WHAT IS MCI'S POSITION ON ISSUE 17(B) AND HOW DO YOU
6 RESPOND?

7

8 A. MCI's position on this issue is another attempt to use interLATA virtual
9 NXX or FX-like services to avoid paying switched access charges. Ms.
10 Decker addresses Mr. Ricca's arguments and MCI's position in general
11 in her testimony on virtual NXX or FX-like services and I will not repeat
12 them here. However, I do provide the Commission with additional
13 policy reasons as to why MCI's position must be rejected.

14

15 Q. WHAT IS THE STANDARD FOR DETERMINING THE TYPE OF
16 INTERCARRIER COMPENSATION OWED BETWEEN CARRIERS?

17

18 A. As Ms. Decker aptly points out, the FCC has long held that the
19 jurisdiction of calls for intercarrier compensation purposes is determined
20 by the call's geographical end points.⁸ If, after applying the
21 geographical end points analysis, the call is local in nature, reciprocal

⁸ See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum Opinion and Order*, FCC 04-267 at ¶ 17 (Nov. 12, 2004) ("Vonage Order").

1 compensation is owed. If, however, the call crosses a LATA boundary,
2 then switched access charges apply.

3

4 Q. IF JURISDICTION IS DETERMINED BASED ON THE
5 GEOGRAPHICAL END POINTS OF A CALL, WHAT INFORMATION
6 HAS BEEN USED HISTORICALLY TO IDENTIFY THESE END
7 POINTS?

8

9 A. Historically, the industry standard for determining the geographical end
10 points of a call was the NPA/NXXs of the calling and called parties.
11 This is so because, in the public switched telephone network ("PSTN"),
12 the practice in the industry was to assign a unique NPA/NXX to each
13 local exchange. Under this traditional method, the NPA/NXX accurately
14 pinpointed the physical locations of the originating and terminating
15 points of a call to within a defined geographic area – a local exchange.
16 Accordingly, examination of the NPA/NXX of the two end points of a call
17 was, thus, the sole basis needed to determine, with certainty, the
18 correct jurisdiction of the call for intercarrier compensation purposes.

19

20 Q. IF THE NPA/NXX OF CALLING AND CALLED PARTIES HAS BEEN
21 THE PRIMARY METHOD USED TO ESTABLISH THE PHYSICAL
22 END POINTS OF A CALL, WHY SHOULDN'T NPA/NXX NUMBERS
23 BE USED AS THE SOLE BASIS FOR CALL JURISDICTION?

24

25 A. Because carriers can now assign NPA/NXXs to customers that are

1 physically located outside the local exchange where the NPA/NXX is
2 homed, using NPA/NXXs to rate a call for intercarrier compensation
3 purposes is no longer appropriate. For example, a customer physically
4 located in Jacksonville who subscribes to MCI's virtual NXX service can
5 obtain a telephone number from Los Angeles, CA. As a result, if the
6 NPA/NXX of the calling and called parties was used to determine
7 jurisdiction, calls from the customer physically located in Jacksonville to
8 end users physically located in Los Angeles would appear to be local
9 calls. Thus, if MCI's proposal was adopted, MCI would pay only
10 reciprocal compensation charges and not access charges even though
11 the call was clearly interstate.

12

13 Q. WHY DO YOU BELIEVE THAT MCI IS RECOMMENDING THAT THE
14 NPA/NXX OF CALLS REMAIN AS THE SOLE BASIS FOR
15 DETERMINING THE JURISDICTION OF A CALL FOR
16 INTERCARRIER COMPENSATION PURPOSES?

17

18 A. MCI is recommending a departure from the traditional method of using
19 physical end points of calls to determine jurisdiction purely for MCI's
20 financial gain. During the past few years, MCI's network has largely
21 migrated to an Internet Protocol ("IP") backbone and many of the
22 services offered by MCI, such as MCI's Neighborhood, are able to take
23 advantage of the technical capabilities of an IP network. One of those
24 advantages is the ability to offer customers "virtual NPA/NXX"
25 numbering. As I discussed above, because the assignment of

1 NPA/NXXs are no longer limited to end users physically residing within
2 the local exchange boundaries, NPA/NXX is no longer an accurate
3 determinant for jurisdiction. Use of just NPA/NXX under MCI's scheme
4 would result in false designations of "local" when the call is actually
5 interLATA or even interstate. Thus, it is to MCI's economic benefit,
6 then, to classify as many calls as possible as "local" to avoid the
7 payment of access charges.

8

9 Q. IF MCI'S POSITION ON THIS ISSUE IS ADOPTED, HOW WOULD
10 THAT IMPACT THE EXISTING INTERCARRIER COMPENSATION
11 MECHANISM IN PLACE TODAY?

12

13 A. If MCI's position is adopted, that is, if the jurisdiction of traffic is based
14 solely on the NPA/NXX of the parties without regard for their
15 geographical locations, the current intercarrier compensation
16 mechanism will be significantly altered and the incentives for carriers to
17 claim all traffic is "local" will be difficult to resist. Such an outcome
18 could be detrimental for federal and state support programs such as the
19 federal Universal Service Fund ("USF") and state commission collection
20 of regulatory assessment fee allocations based on jurisdictional
21 revenue.

22

23 Q. CAN YOU PLEASE EXPAND AS TO HOW THE ADOPTION OF MCI'S
24 POSITION WOULD IMPACT THE USF?

25

1 A. The USF is a mechanism by which carriers pay fees into the fund,
2 based upon a designated percentage of their interstate revenue, to
3 subsidize high-cost telephone service in typically rural areas. To the
4 extent that MCI re-classifies interLATA, interstate traffic as local by
5 using the NPA/NXX to determine the jurisdiction of the call, both MCI's
6 and BellSouth's contribution to the USF would decrease. This is so
7 because BellSouth would receive reciprocal compensation and not
8 interstate access charges from MCI and because MCI would
9 presumably not receive interstate toll revenue from its end users.

10

11 Importantly, the FCC determines the amount of funds necessary to be
12 collected from carriers to support the USF. If, in fact, the contributions
13 from MCI and other carriers decrease as a result of MCI's
14 reclassification of calls from interstate to local, then all remaining
15 carriers' assessments will have to be increased in order to meet the
16 amount set by the FCC for USF funding.

17

18 Q. HAS THE FCC RECOGNIZED THE IMPORTANCE OF USF
19 CONTRIBUTIONS?

20

21 A. Yes. The FCC has considered an instance where a carrier made a
22 unilateral decision to change or alter the classification of certain calls
23 resulting in the carrier underpaying to the USF. In the AT&T
24 *Declaratory Ruling Regarding Prepaid Enhanced Calling Card Services*,
25 the FCC addressed AT&T's claim that it had "saved" \$160 million in

1 USF contributions since early 1999 by deciding to treat “enhanced”
2 prepaid calling cards as information services. In its Order, the FCC
3 directed AT&T and other similarly-situated carriers to re-file the
4 appropriate documents to reflect the underpaid USF contributions and
5 make restitution by paying, in full, the USF amounts it had underpaid.⁹
6

7 Q. ARE THERE OTHER ASSESSMENTS THAT WOULD BE IMPACTED,
8 AS WELL, IF MCI'S POSITION IS ADOPTED?
9

10 A. Yes. Most state public service commissions, including the Florida
11 Commission, assess utilities certain regulatory fees that are used to pay
12 the expenses of the Commission used in regulating the utilities. The
13 regulatory fee assessments are generally based on a percentage of
14 each utility's intrastate revenues. The Florida Commission calculates
15 the regulatory assessment fee applicable to each regulated company in
16 the amount of 0.0020 (0.2%) of its annual gross operating revenues
17 derived from Florida intrastate business, reduced by any amounts paid
18 to other telecommunications companies for necessary network
19 facilities.¹⁰ As with the support of USF discussed above, to the extent
20 that MCI proposes to re-classify *intrastate* access communications
21 services and revenue to local by using the NPA/NXX to determine the
22 jurisdiction of calls, a carrier's assessment of regulatory fees to support

⁹ See *In re: AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, FCC Order 05-41, Docket No. 03-133 at ¶ 30, 31 (Feb. 23, 2005).

¹⁰ See *Rules of the Florida Public Service Commission*, Chapter 25-4, Rule 25-4.0161.

1 the operations of the Florida Commission would decrease
2 proportionately.

3

4 **Issue 17c:**

5

6 Q. WHAT IS MCI'S POSITION ON ISSUE 17(C) AND HOW DO YOU
7 RESPOND?

8

9 A. On pages 23-24, Mr. Ricca states that BellSouth's optional extended
10 area service traffic should not be classified as local and that MCI should
11 be paid access charges for terminating these calls. Mr. Ricca further
12 speculates that BellSouth's sole motivation for offering optional EAS
13 service is to avoid paying switched access charges to MCI.

14

15 As an initial matter, BellSouth offers optional calling plans to its
16 customers as an incentive to attract and retain customers. BellSouth
17 does not offer such plans with the objective of eliminating any access
18 charges that it may be currently paying to MCI or any other carriers.

19

20 Q. WHAT DOES MCI PRIMARLY RELY ON TO SUPPORT ITS
21 POSITION?

22

23 A. MCI believes that switched access applies to these types of calls
24 because they constitute intraLATA toll calls. The Act, however, defines
25 a "telecommunications toll call" as "telephone service between stations

1 in different exchange areas for which there is made a separate charge
2 not included in contracts with subscribers for exchange service.” 47
3 U.S.C. 153 § 3(47). BellSouth does not charge its optional calling area
4 customers a separate charge for making intraLATA toll calls that are
5 covered in the expanded calling area. Thus, optional calling plans are
6 not considered toll calls. Accordingly, MCI can find no support for its
7 position in the Act.

8

9 Q. DOES THE COMMISSION’S DEFINITION OF LOCAL SERVICE
10 SUPPORT MCI’S POSITION?

11

12 A. No. The Commission’s Rule 25-4.003(32) defines “Local Service Area”
13 or “Local Calling Area” as “[t]he area within which telephone service is
14 furnished subscribers under a specific schedule of rates and without toll
15 charges. A LEC’s local service area may include one or more
16 exchange areas or portions of exchange areas.” Therefore, there
17 should be no dispute that optional extended calling plans, like Area
18 Plus, should fall within the definition of local traffic because BellSouth
19 does not apply toll charges to customers of extended calling plans.

20

21 Q. DOES MCI’S TESTIMONY SUPPORT BELLSOUTH’S POSITION ON
22 THIS ISSUE?

23

24 A. Yes. On page 17 of his testimony, Mr. Ricca states the following:

25

1 The reasoning underlying the reciprocal
2 compensation found in the Act is simple and
3 straight-forward: the customer originating the local
4 telephone call pays for that call, **at his or her local**
5 **rates**, to the local exchange carrier ("LEC") serving
6 that customer. (Emphasis added)

7

8 Based on this admission, it is disingenuous, for MCI to propose that
9 BellSouth compensate MCI for switched access charges for traffic that
10 BellSouth has tariffed as local service, whether traditional local
11 exchange traffic, non-optional EAS traffic, or optional extended calling
12 area traffic.

13

14 Q. ON PAGE 27, MR. RICCA REFERS TO "ARBITRAGE" THAT
15 OCCURS WHEN THE TOTAL MINUTES TERMINATED ARE RATED
16 AT THE LOWER RECIPROCAL COMPENSATION RATES INSTEAD
17 OF SWITCHED ACCESS CHARGES. WOULD YOU PLEASE
18 COMMENT?

19

20 A. Yes. Rating of the vast majority, if not all, terminating traffic at the lower
21 reciprocal compensation rates appears to be the very objective of MCI
22 in this arbitration. With its position that the classification of calls should
23 be determined solely by the NPA/NXX of the caller and without regard
24 for the actual physical locations of the calling and called parties, MCI
25 attempts to acquire the ability to classify all traffic as local.
26 Accordingly, Mr. Ricca's statements of arbitrage ring hollow.

27

1 Q. MCI WITNESS RICCA ATTEMPTS TO MAKE A DISTINCTION
2 BETWEEN WHOLESALE COMPENSATION ASSOCIATED WITH
3 OPTIONAL CALLING PLANS VS. NON-OPTIONAL CALLING PLANS.
4 SHOULD THOSE PLANS BE TREATED DIFFERENTLY?

5
6 A. No, not with respect to intercarrier compensation. Both optional and
7 non-optional calling plans are calling arrangements that are provided
8 under a specific schedule of rates (without toll charges). Those optional
9 and non-optional calling plans allow subscribers to make calls to other
10 areas that were previously toll calls for an additional cost that is
11 included in their local, flat-rate service.

12
13 Q. ON PAGE 25, MR. RICCA STATES THAT EAS PLANS ARE
14 MANDATORY IN THE SENSE THAT THERE IS NO CHOICE ON THE
15 PART OF ALL CUSTOMERS. PLEASE EXPLAIN HOW NON-
16 OPTIONAL CALLING PLANS, SUCH AS EAS, ARE SUBJECT TO
17 CUSTOMER APPROVAL.

18
19 A. While EAS plans may be implemented without the approval of all
20 customers, it is necessary to demonstrate that, "...a significant
21 community of interest existed among the affected exchanges."¹¹ Such
22 a community of interest may be documented through evidence such as
23 poll results, usage data, and description of the communities involved.

¹¹See BellSouth Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS), FCC 01-2892 at ¶ 4 (Dec. 19, 2001).

1 BellSouth, then, cannot arbitrarily implement an EAS arrangement
2 without proof that a bona fide community of interest exists and must
3 submit all such plans to the Commission for approval. In addition, if the
4 proposed EAS plan requires a modification of a LATA boundary, then
5 the FCC must approve the plan, as well. Once approved, the non-
6 optional EAS plan applies to all subscribers in the affected exchange.

7

8 ***Issue 18: Should IP/PSTN And PSTN/IP/PSTN Traffic Be Excluded From***
9 ***The Definition Of IntraLATA Toll Traffic?***

10

11 ***Issue 19: What Intercarrier Compensation Regime Should Be Used For***
12 ***IP/PSTN And PSTN/IP/PSTN Traffic?***

13

14 ***Issue 23: How Should IP/PSTN And PSTN/IP/PSTN Traffic Be***
15 ***Categorized For Purposes Of Determining Compensation For***
16 ***Interconnection Facilities And Termination Of Traffic?***

17

18 Q. WHAT IS BELLSOUTH'S GENERAL POSITION FOR THESE
19 ISSUES?

20

21 A. The Commission has no jurisdiction to address IP/PSTN traffic. The
22 FCC determined in the *Vonage Order* that IP/PSTN traffic is
23 jurisdictionally mixed and that the FCC has the exclusive authority to
24 regulate the interstate portion of the traffic. See *Vonage Order* at ¶ 18.
25 Further, the FCC preempted any state regulation of the intrastate
26 portion of the traffic because it found that state regulation “would thwart
27 or impede the lawful exercise of federal authority over the interstate
28 component of the communications.” *Id.* at ¶ 19. Thus, the FCC alone
29 has jurisdiction to address this issue.

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Regarding PSTN/IP/PSTN (“IP in the Middle”), the FCC determined in its *AT&T IP in the Middle Order*, (FCC 04-97 at ¶¶ 12, 15) that, the PSTN/IP/PSTN traffic at issue in that proceeding is a telecommunications service and that this traffic is subject to access charges. MCI has agreed in the interconnection agreement to such treatment of IP-in- the-Middle traffic to the extent the IP portion of the call does not provide any enhanced functionalities. See Attachment 3, § 7.9.1.1. Thus, the parties agree that for pure IP in the Middle traffic, geographical end points of PSTN/IP/PSTN traffic establish jurisdiction for compensation purposes and the Commission need not render any other decision. To the extent MCI PSTN/IP/PSTN traffic provides enhanced functionalities, such traffic is under the exclusive jurisdiction of the FCC and the Commission is precluded from deciding what compensation regime applies to it.

Q. WHAT IS MCI’S POSITION FOR THESE ISSUES AND HOW DO YOU GENERALLY RESPOND?

A. The testimony of Mr. Ricca, beginning on page 29, suggests several actions that the Commission should take to allegedly “clarify” the compensation arrangements between the parties for IP/PSTN and PSTN/IP/PSTN traffic. Central among the several proposals is his request that the Commission implement a new traffic allocation factor, the Percent Enhanced Usage (“PEU”) factor. The PEU factor is

1 apparently intended to represent the percentage of traffic that each
2 party sends for termination to the other that is classified as “enhanced”
3 or VOIP traffic. MCI further suggests that the appropriate termination
4 rate for such traffic is the existing terminating rate ordered specifically
5 for ISP-bound traffic of \$0.0007 per minute of use.

6
7 Thus, the entirety of Mr. Ricca’s testimony is nothing more than an
8 attempt to change the status quo and convince this Commission to
9 order that reciprocal compensation and not access charges applies to
10 interLATA VoIP traffic, even though this Commission has no jurisdiction
11 under federal law to make this finding. Accordingly, the Commission
12 should reject MCI’s request that it undermine the efforts of the FCC.

13

14 Q. HAS MCI TAKEN A DIFFERENT POSITION IN THE PAST
15 REGARDING HOW THIS COMMISSION SHOULD DECIDE THIS
16 ISSUE?

17

18 A. Yes. In the prior BellSouth/MCI arbitration, MCI argued that the
19 classification of IP telephony for intercarrier compensation purposes is
20 solely within the FCC’s jurisdiction and requested that the Commission
21 avoid ruling on the issue. See *MCI Post-Hearing Brief*, Docket No.
22 000649-TP at Issue 41. The Commission should follow MCI’s prior
23 argument here, especially in light of the FCC’s subsequent
24 determination that it alone has jurisdiction over this traffic.

25

1 Q. ON PAGE 37, MR. RICCA STATES THAT MCI IS NOT ASKING THE
2 COMMISSION TO ESTABLISH NEW RULES FOR INTERCARRIER
3 COMPENSATION FOR VOIP TRAFFIC. DO YOU AGREE?
4

5 A. Not at all. It is clear from Mr. Ricca's testimony that MCI is asking the
6 Commission to affirmatively declare that interLATA VoIP traffic routed
7 over the PSTN should be subject to reciprocal compensation and not
8 access charges. Of paramount importance, however, the FCC and not
9 this Commission has the authority to make such a finding. Further,
10 there are no current FCC rules or Orders that support such a finding.
11 And, in fact, the FCC's *AT&T IP in the Middle Order* establishes rules to
12 the contrary for PSTN/IP/PSTN traffic for which the IP portion of the call
13 provides no enhanced functionalities. Simply put, the FCC has done
14 nothing to date to change its rules and standards which dictate that the
15 physical end points of the call determine the appropriate intercarrier
16 compensation for IP/PSTN and PSTN/IP/PSTN traffic and this
17 Commission cannot rule otherwise.¹²
18

19 Q. MR. RICCA STRIVES TO MAKE A DISTINCTION BETWEEN THE
20 PSTN/IP/PSTN TRAFFIC DEFINITION REFERENCED IN THE FCC'S
21 *AT&T IP IN THE MIDDLE ORDER* FROM MCI'S PROPOSED
22 DEFINITION OF PSTN/IP/PSTN IN ATTACHMENT 3 OF THE

¹² Mr. Ricca's reliance on the FCC's *Pulver Order* (See *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd3307, (2004) is misplaced because that decision dealt only with pure VoIP traffic that never touched the PSTN. This specific type of traffic is not at issue in this proceeding.

1 AGREEMENT. IS THERE A DIFFERENCE?

2

3 A. Based on the evidence presented by MCI to date, the answer is maybe.
4 BellSouth has no knowledge that MCI is providing any enhanced
5 functionalities with its PSTN/IP/PSTN traffic. To the extent MCI does
6 not, the parties have already agreed that the traffic will be treated like
7 the traffic at issue in the *AT&T IP in the Middle Order* and will be
8 subject to access charges. *AT&T IP in the Middle Order* at ¶ 18.
9 Further, if it turns out that the PSTN/IP/PSTN traffic under this
10 agreement is in fact different because the IP portion of the MCI call
11 provides enhanced functionalities, then the traffic is under the sole
12 jurisdiction of the FCC and, similar to IP/PSTN traffic, the Commission
13 should refuse to arbitrate the issue. In the event the Commission
14 decides to disregard the FCC's total preemption of this issue, the
15 Commission should find that the physical end points of the call
16 determine jurisdiction for intercarrier compensation purposes.

17

18 Q. DID THE FCC RECOGNIZE THAT CARRIERS MAY HAVE AN
19 INCENTIVE TO CLASSIFY TRAFFIC AS ENHANCED SOLELY FOR
20 THE PURPOSE OF AVOIDING ACCESS CHARGES?

21

22 A. Yes. In the *AT&T IP in the Middle Order*, the FCC stated:

23

24 Although AT&T asserts that conversion to IP can
25 produce enormous efficiencies by allowing the
26 integrated provision of voice, data, and enhanced

1 services, exempting from interstate access charges
2 a service such as AT&T's that provides no
3 enhanced functionality would create artificial
4 incentives for carriers to convert to IP networks.
5 Rather than converting at a pace commensurate
6 with the capability to provide enhanced
7 functionality, carriers would convert to IP networks
8 merely to take advantage of the cost advantage
9 afforded to voice traffic that is converted, no matter
10 how briefly, to IP and exempted from access
11 charges. IP technology should be deployed based
12 on its potential to create new services and network
13 efficiencies, not solely as a means to avoid paying
14 access charges.¹³
15

16 Q. CAN YOU PLEASE COMMENT ON MCI'S PROPOSED PEU
17 FACTOR?

18

19 A. Yes. While BellSouth disagrees that any factor is appropriate if it
20 results in interLATA VoIP traffic being considered local traffic, the fact
21 that MCI believes that it can establish a factor for VoIP traffic
22 affirmatively proves that the physical end points of the call methodology
23 is feasible. This conclusion is further buttressed by the fact that MCI
24 has an affirmative obligation to know the physical location of a VoIP
25 originated call. See *E911 Order*, FCC 05-116 at ¶ 46.

26

27 ***Issue 26: Is BellSouth Obligated To Act As A Transit Carrier? If So,***
28 ***What Is The Appropriate Transit Rate?***

29

30 Q. WHAT IS MCI'S POSITION AND HOW DO YOU RESPOND?

¹³ See *AT&T IP in the Middle Order* at ¶ 18

1

2 A. MCI's position is that BellSouth is obligated to provide a transit function
3 and should be required to do so at the tandem switching TELRIC rate.
4 While MCI may desire such an outcome, MCI has no basis to support
5 its position, as I explained in my Direct Testimony and as I state here.

6

7 Q. IS THE TANDEM SWITCHING IDENTICAL TO THE TRANSIT
8 FUNCTION AS PROFESSED BY MR. RICCA ON PAGES 49-50?

9

10 A. No. Tandem switching, as the name implies, involves BellSouth
11 switching a call at the BellSouth tandem that terminates to a BellSouth
12 end user and is not inclusive of the transit function.

13

14 Q. IS BELLSOUTH REFUSING TO PROVIDE THE TRANSIT
15 FUNCITON?

16

17 A. No. However, BellSouth cannot be required, nor is it under any federal
18 obligation, to provide the transit service at TELRIC for the reasons I
19 discussed in my Direct Testimony.

20

21 Q. CAN YOU PLEASE EXPLAIN WHY BELLSOUTH DOES NOT HAVE
22 TO PROVIDE THE TRANSIT FUNCTION AT TELRIC?

23

24 A. BellSouth currently has no federal law obligation to provide the transit
25 function. The FCC made this clear in the *TRO* as it stated: "To date,

1 the Commission's rules have not required incumbent LECs to provide
2 transiting." *TRO* at ¶ 534, n. 1640. The Commission also recently
3 refused to find that BellSouth has an obligation to provide the Transit
4 Intermediary Charge ("TIC") at TELRIC in the *Florida JP Order*, holding
5 that "[a] TELRIC rate is inappropriate because transit service has not
6 been determined to be a § 251 UNE."¹⁴ Thus, the Commission has
7 already determined that a non-TELRIC rate for the TIC is appropriate.

8
9 Further, BellSouth has no implied duty under Section 251(a)(1) to
10 provide the transit function. This provision imposes a duty on every
11 telecommunications carrier (including without limitation ICOs, ILECs
12 and CLECs) to "interconnect directly or indirectly with the facilities and
13 equipment of other telecommunications carriers" This section
14 clearly does not require every telecommunications carrier in the country
15 to provide a transiting function to any other carrier that asks for it.

16
17 In fact, although the decision was reached in another context, the FCC
18 has already determined that the duty to interconnect imposed by
19 Section 251(a)(1) does not include any obligation to transport traffic. *In*
20 *the Matter of Total Telecommunications Services Inc. and Atlas*
21 *Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003,
22 *Memorandum Opinion and Order*, 16 FCC Rcd 5726 (2001), *affm in*

¹⁴ *Florida JP Order* at 52.

1 *part, remanded in part, AT&T Corporation v. FCC, 317 F.3d 227 (D.C.*
2 Circuit 2003). In this proceeding, the FCC concluded that the term
3 “interconnection,” as it is used in Section 251 (a)(1), “cannot reasonably
4 be interpreted to encompass a general requirement to transport and
5 terminate traffic.” *Id.* at ¶ 26.

6

7 Clearly, although the FCC has not been faced with the precise issue
8 presented in the case pending before this Commission, the FCC has
9 concluded that Section 251(a)(1) does not require a carrier to “transport
10 and terminate” calls to any carrier with which the transiting carrier is
11 interconnected. Consequently, Section 251(a)(1) does not require
12 BellSouth to provide a transiting function to MCI or any other carrier.

13

14 Moreover, the obligation to allow for indirect interconnection in Section
15 251(a)(1) does not equate into a finding that ILECs must provide the
16 transit function. Because Section 251(a) is applicable to all
17 telecommunications carriers, it is impossible to glean from that section
18 an obligation that is applicable to only one type of telecommunications
19 carrier.

20

21 Q. IS MR. RICCA'S RELIANCE ON THE *FIRST REPORT AND ORDER*
22 TO SUPPORT MCI'S POSITION CORRECT?

23

1 A. No. Mr. Ricca apparently is attempting to use the *First Report and*
2 *Order* to suggest that BellSouth has a Section 251(c) obligation to
3 provide its transit function. He is incorrect. Section 251(c)(2)(a) does
4 not require carriers to provide the transit function. This statute requires
5 ILECs to interconnect with “the facilities and equipment of any
6 requesting telecommunications carrier” for the “transmission and
7 routing of telephone exchange service and exchange access”

8
9 Further, the FCC has stated, clearly and without equivocation that
10 Section 251(c)(2) only relates to interconnection and does not implicate
11 transport. *See In the Matter of Implementation of the Local Competition*
12 *Provisions in the Telecommunications Act of 1996 Interconnection*
13 *between Local Exchange Carriers and Commercial Mobile Radio*
14 *Service Providers*, CC Docket No. 96-98, CC Docket No.95-185, *First*
15 *Report and Order*, 11 FCC Rcd 15499 (1996).

16
17 Q. BECAUSE BELLSOUTH HAS NO SECTION 251(C) OBLIGATION TO
18 PROVIDE ITS TRANSIT SERVICE, IS A TELRIC RATE
19 APPROPRIATE?

20
21 A. No. The FCC in the *TRO* made it clear that “section 252(d)(1) is quite
22 specific that it only applies for the purposes of implementation of
23 section 251(c)(3) – meaning only where there has been a finding of
24 impairment with regard to a given network element.” *TRO* at ¶ 657.
25 The D.C. Circuit affirmed this TELRIC limitation in *USTA II*, wherein it

1 held: “. . . we see nothing unreasonable in the Commission’s decision to
2 confine TELRIC pricing to instances where it has found impairment.”¹⁵
3 Thus, because BellSouth has no Section 251(c) obligation to provide its
4 transit function, the Commission has no authority to order that it must
5 be priced at TELRIC.

6

7 Q. ARE CLECs REQUIRED TO USE BELLSOUTH’S TRANSIT
8 SERVICE?

9

10 A. No. CLECs can connect directly with other carriers in order to
11 exchange traffic. They do not need BellSouth to pass such traffic for
12 them. For whatever efficiencies they gain, many CLECs have elected
13 to have BellSouth perform a transit traffic function for them. CLECs that
14 elect to have BellSouth perform this function should negotiate the rates,
15 terms, and conditions of transit traffic in a separate agreement or
16 purchase the service out of BellSouth’s transit tariff, which has already
17 been approved by the Commission.

18

19 ***Issue 31: Should BellSouth Provide A Download With Daily Updates To***
20 ***The Directory Assistance Database (DADS) To MCI, At A***
21 ***Nondiscriminatory Price?***

22

23 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING MR.
24 LEHMKUHL’S TESTIMONY?

25

¹⁵*United States Telecom Assc’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) at 589 (“USTA II”).

1 A. Yes. The entirety of Mr. Lehmkuhl's argument is nothing more than an
2 attempt to obtain a non-UNE at TELRIC pricing so that MCI can obtain
3 a greater profit margin when it uses BellSouth's Directory Assistance
4 Database Service ("DADS"). Upon information and belief, MCI uses
5 DADS information for its own directory assistance services in addition
6 to reselling it to other entities. To fully understand the fallacy of Mr.
7 Lehmkuhl's arguments, a brief review of BellSouth's DADS product, as
8 well as the history of BellSouth's obligation to provide DADS, is
9 necessary.

10

11 Q. PLEASE DESCRIBE BELLSOUTH'S DADS PRODUCT.

12

13 A. BellSouth currently offers its DADS product pursuant to its General
14 Subscriber Services Tariff, Section A38.1, to both CLECs and non-
15 CLECs. Companies that subscribe to DADS obtain information
16 contained in BellSouth's directory assistance databases that includes
17 (1) a base file that contains subscriber list information, including, but not
18 limited to, local exchange subscriber name, address, and telephone
19 number listing information; and (2) a daily update of any listing change
20 activity occurring since the customer's most recent update. DADS
21 includes those listings of BellSouth's local exchange customers, ICOs,
22 and CLEC customers who have chosen to provide their subscriber
23 listing information to BellSouth.

24

25 Q. WHO PURCHASES BELLSOUTH'S DADS PRODUCT?

1

2 A. BellSouth has several different types of customers that purchase
3 DADS, including CLECs and non-CLEC, competing directory
4 assistance (“DA”) providers. Currently, both CLECs and non-CLECs
5 who subscribe to BellSouth’s DADS product pay the same rate out of
6 BellSouth’s tariff for this service. Consequently, the Commission’s
7 decision on this issue should not be decided in a vacuum and should
8 take into account the impact any decision will have on competitors in
9 the industry.

10

11 Q. WHY WOULD A CLEC OR NON-CLEC PURCHASE DADS?

12

13 A. Companies purchase DADS for the primary purpose of including
14 BellSouth’s directory listing information for its own directory assistance
15 service. For instance, INFONXX touts itself as the “largest independent
16 directory assistance supplier in the world.” See Exhibit PAT-4.
17 Likewise, LSSI claims that it is the “world leader in developing
18 advanced directory databases.” See Exhibit PAT-5. And, even MCI
19 claims to have the “highest quality” national wireline DA data.” MCI’s
20 service, “...aggregates contents for over a hundred sources”, including
21 RBOC’s (like BellSouth), ILEC’s, CLEC’s VOIP providers, and cable
22 companies.” See Exhibit PAT-6. All of these companies have to
23 purchase DADS or a DADS-like product either directly from BellSouth
24 or from another DA provider who purchased DADS and is reselling the
25 information. And, all of these companies, in addition to several other

1 companies, compete against BellSouth in providing DA database
2 services in BellSouth's region.

3

4 Q. WHAT ARE BELLSOUTH'S OBLIGATIONS WITH RESPECT TO
5 DIRECTORY ASSISTANCE LISTINGS?

6

7 A. To understand BellSouth's current obligation to provide DADS, in
8 particular, and directory assistance, in general, a brief review of the
9 history of this issue is helpful. In the *First Report and Order*,¹⁶ the FCC
10 required incumbent LECs to provide unbundled access to their operator
11 services and directory assistance (OS/DA). *First Report and Order* at ¶
12 539. The FCC further determined that under Section 251(d)(2)(B) a
13 "competitor's ability to provide service would be significantly impaired if
14 they did not have access to incumbent LEC's operator call completion
15 services and directory assistance." *Id.* at ¶ 540. Thus, in the *First*
16 *Report and Order*, the FCC determined that CLECs were impaired
17 without access to directory listings, and therefore operator services and
18 directory assistance ("OS/DA") was determined to be a UNE priced at
19 TELRIC.

20

21 In 1999, the FCC reversed its findings in the *First Report and Order* and
22 held that there was "significant evidence of a wholesale market in the

¹⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket. No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*First Report and Order*").

1 provision of OS/DA services and opportunities for self-provisioning
2 OS/DA services. ... Accordingly, incumbent LECs need not provide
3 access to its OS/DA as an unbundled network element.”¹⁷ Thus, in the
4 *UNE Remand Order*, the FCC determined that directory listings was not
5 a UNE and did not have to be priced at TELRIC. The FCC further
6 stated that, although not a Section 251(c) obligation, incumbent LECs
7 had an obligation to provide “nondiscriminatory access” to its underlying
8 databases pursuant to Section 251(b)(3). *UNE Remand Order* at ¶
9 442.

10

11 The FCC clarified this Section 251(b)(3) nondiscrimination obligation in
12 its *2001 SLI/DA Order*.¹⁸ Specifically, the FCC stated:

13

14 Section 251(b)(3) of the Act and the Commission’s
15 rules prohibit LECs from charging discriminatory
16 rates, for access to DA databases, to competing
17 directory assistance providers that fall within the
18 protection of that section (i.e., those that provide
19 telephone exchange or telephone toll service).
20 Thus, LECs must offer access to their DA database
21 **at rates that do not discriminate among the**
22 **entities to which it provides access.** Further,
23 failure to provide directory assistance at
24 nondiscriminatory and reasonable rates to DA

¹⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”) at ¶¶ 441-442. The FCC confirmed this finding in its *Triennial Review Order* wherein it stated that “[t]he Commission removed directory assistance and operator services from the list of UNEs in the *UNE Remand Order*.” *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket Nos. 01-338, 96-98, and 98-147, *Report and Order and Order on Remand*, 16 FCC Rcd 16978 (2003) (“*Triennial Review Order*” or “*TRO*”) at ¶ 661.

¹⁸ *In the Matter of Provision of Directory Listing Information*, CC Docket No. 99-273, *First Report and Order*, 16 FCC Rcd 2736 (2001) (“*2001 SLI/DA Order*”).

1 providers within the protection of section 251(b)(3)
2 may also constitute an unjust charge under section
3 201(b) (emphasis added).

4

5 *2001 SLI/DA Order* at ¶ 35.¹⁹

6

7 Consequently, BellSouth's obligation to provide access to its DA
8 databases lies under Section 251(b)(3). This requires BellSouth to
9 provide the service at rates "that do not discriminate among the entities
10 to which it provides access." Further, the FCC made it clear that the
11 determination of whether BellSouth meets this obligation is the just and
12 reasonable standard of Section 201 of the Act.

13

14 Q. HOW DOES A CARRIER COMPLY WITH THE 201 STANDARD?

15

16 A. The FCC stated in the *TRO* that a BOC could satisfy the Section 201
17 standard by (1) establishing that it is offering the service at rate "at or
18 below the rate at which the BOC offers comparable functions to
19 similarly situated purchasing carriers" under its tariffs; or (2) showing
20 that "it has entered into arms-lengths agreements with other, similarly
21 situated purchasing carriers to provide the element at that rate." *TRO*
22 at ¶ 664.

¹⁹ The FCC defined competing DA provider as entities "that are certified by state public utilities commission as competitive LECs, that are agents of competitive LECs, or that offer call completion services." *In the matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, et al.*, CC Docket Nos. 96-115, 96-98, 99-273, *Order on Reconsideration*, FCC 05-93, released May 3, 2005, at ¶ 3 ("2005 SLI/DA Order on Reconsideration").

1

2 Q. HOW DOES BELLSOUTH MEET THE OBLIGATION TO PROVIDE
3 DADS WITH NONDISCRIMINATORY PRICING?

4

5 A. BellSouth meets its nondiscriminatory pricing obligation by charging all
6 of its customers (CLECs and non-CLECs) the same rate.

7

8 Q. DOES BELLSOUTH'S SECTION 251(B)(3) OBLIGATION REQUIRE
9 BELLSOUTH TO PROVIDE ACCESS TO ITS DADS SERVICE AT
10 TELRIC RATES AS MR. LEHMKUHL ASSERTS?

11

12 A. Absolutely not.

13

14 Q. PLEASE EXPLAIN.

15

16 A. First, BellSouth's obligation to provide nondiscriminatory access to its
17 directory assistance database is a Section 251(b)(3) obligation, not a
18 Section 251(c) obligation.

19

20 Q. WHAT IS THE DIFFERENCE BETWEEN A 251(B)(3) OBLIGATION
21 AND A SECTION 251(C) OBLIGATION WITH RESPECT TO THE
22 DADS OFFERING?

23

24 A. As I discussed above in Issue 26, the FCC in the *TRO* made it clear
25 that "section 252(d)(1) is quite specific that it only applies for the

1 purposes of implementation of section 251(c)(3) – meaning only where
2 there has been a finding of impairment with regard to a given network
3 element.” *TRO* at ¶ 657. Accordingly, because DADS is not a Section
4 251(c) UNE, BellSouth has no obligation to provide the service at
5 TELRIC.

6
7 Q. HAVE ANY OTHER AUTHORITIES PROVIDED GUIDANCE ON THIS?

8
9 A. Yes. The D.C. Circuit affirmed this TELRIC limitation in *USTA II*,
10 wherein it held: “. . . we see nothing unreasonable in the Commission’s
11 decision to confine TELRIC pricing to instances where it has found
12 impairment.”²⁰ As stated above, BellSouth has no Section 251(c)
13 obligation to provide DADS and the FCC has made it clear that CLECs
14 are not impaired without DADS. Thus, as mandated by the FCC and
15 affirmed by the DC Circuit court, TELRIC **cannot** apply to BellSouth’s
16 DADS offering.

17
18 Q. WHY IS MCI’S POSITION TO PROVIDE DADS AT TELRIC AN
19 INAPPROPRIATE AND SENSELESS POSITION EVEN TO THE
20 DETRIMENT OF MCI?

21
22 A. The obligation to provide nondiscriminatory access to directory
23 assistance listings lies under Section 251(b)(3). Section 251 (b) applies

²⁰ *USTA II* at 589.

1 to all carriers. Consequently, if MCI's position is adopted, then MCI will
2 have to provide its directory assistance listings to BellSouth at TELRIC.
3 This conclusion is contrary to the law and the real world. As an initial
4 matter, no CLEC will ever agree to provide any of its services at
5 TELRIC. Further, the Act expressly provides that the TELRIC pricing
6 standard only applies to incumbents. See 47 U.S.C. §§ 251(c)(3);
7 252(d)(1). MCI cannot have it both ways – require BellSouth to provide
8 DADS at TELRIC while it provides its DA services at market-based
9 prices.

10

11 Q. IS THERE ANY OTHER AUTHORITY THAT CONFORMS WITH AND
12 SUPPORTS BELLSOUTH'S POSITION?

13

14 A. Yes. In addition to a Section 251(b)(3) obligation that applies to all local
15 exchange carriers, BellSouth has a Section 271 obligation to provide
16 nondiscriminatory access to directory assistance services. 47 U.S.C. §
17 271(c)(2)(B)(vii)(II). Like BellSouth's Section 251(b)(3) obligation,
18 BellSouth's Section 271 obligation is governed by Section 201's just
19 and reasonable standard.

20

21 Q. HAS BELLSOUTH BEEN FOUND TO COMPLY WITH SECTION 271
22 REQUIREMENTS RELATED TO THE DADS OFFERING?

23

24 A. Yes. The FCC found that BellSouth complies with its Section 271
25 obligation through its DADS offering, and specifically in Florida, no party

1 objected to BellSouth's obligations with respect to directory
2 assistance/operator services.²¹ Accordingly, because the FCC has
3 already determined that BellSouth meets its Section 271 obligation to
4 provide nondiscriminatory access to directory assistance services via
5 DADS, then BellSouth must also meet its Section 251(b)(3) obligation
6 as well. Simply put, because both obligations are governed by the
7 same standard, meeting the Section 271 obligation means that
8 BellSouth also meets its Section 251(b)(3) obligation.

9
10 In further support of this conclusion, and entirely consistent with the
11 2001 SLI/DA Order, the rate offered by BellSouth in this proceeding is
12 the rate contained in its tariff, which all other entities use to purchase
13 DADS from BellSouth. Therefore, under the standard articulated by the
14 FCC as to what constitutes a "just and reasonable" price, BellSouth's
15 tariff satisfies this standard.

16
17 Q. CAN YOU ADDRESS MR. LEHMKUHL'S TESTIMONY ON PAGES 5-6
18 REGARDING A DECISION FROM THE CALIFORNIA PUBLIC
19 SERVICE COMMISSION?

²¹ *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, *Memorandum Opinion and Order*, 17 FCC Rcd 9018 (2002) ("GA/LA 271 Order") at ¶ 253 and n. 974. It is also important to note that during the FCC's review of BellSouth's application to provide interLATA services in North Carolina, no party objected to BellSouth's obligations with respect to directory assistance/operator services. See *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, CC Docket No. 02-150, *Memorandum Opinion and Order*, 17 FCC Rcd 17595 (2002) ("5-State 271 Order") at ¶ 270.

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A. The Commission should not be persuaded by the decision of the California Public Utilities Commission (“CPUC”)’s May 6, 2004 *Opinion Adopting Wholesale Directory Assistance Listing Prices*, Decision 04-05-020 (“*California Order*”) for several reasons. First, the CPUC misapplied the FCC’s findings in the *2001 SLI/DA Order* in determining whether the rate was nondiscriminatory under Section 251(b)(3). The CPUC decision is incorrect because it focused on SBC’s costs in providing directory assistance listings rather than the rate charged to all CLECs by SBC for this service. As made clear by the FCC, “LECs must offer access to their DA database at rates that do not discriminate among the entities to which it provides access.” *2001 SLI/DA Order* at ¶ 35. Accordingly, the standard is not the ILEC’s costs but the rates made available to CLECs. The CPUC failed to apply this standard and thus its analysis is incorrect.

Second, the CPUC based its finding that TELRIC was appropriate for directory assistance listings on the grounds that the CPUC was not prohibited from “exercising discretion” to apply TELRIC to a non-UNE service. *California Order* at pp. 20-21. This is also incorrect as I discussed above. Both the FCC and the D.C. Circuit has expressly determined that TELRIC applies only to Section 251(c) UNEs. There is no dispute that DADS is not a UNE and thus TELRIC cannot apply as a matter of federal law.

1 Third, the CPUC based its decision on the factual finding that SBC
2 failed to provide any evidence that the DA market in California was
3 competitive. *California Order* at pp. 18-19. This is not the case for the
4 DA market in BellSouth's region. There are numerous competing DA
5 providers in BellSouth's region today, including but not limited to:
6 INFONXX, InfoChase, Experian, LeadSource, LSSI, MCI, INFOUSA,
7 W3 Data, and Acxiom. While it is quite difficult to obtain pricing
8 information from these competitors, BellSouth has public information
9 revealing that BellSouth's rate is less than what is offered by certain
10 competitors. For instance, W3 Data website indicates that W3 Data
11 charges anywhere from \$.07 to \$.15 per listing. See Exhibit PAT-7.

12

13 Moreover, further proof that the directory assistance business is
14 competitive is established by the fact that, over the past several years,
15 BellSouth has experienced a 60% decline in its DADS customers. The
16 majority of these former customers is still in business but is receiving
17 BellSouth's database information via another provider, like MCI. Thus,
18 the *California Order* can also be factually distinguishable from the case
19 at hand.

20

21 Q. CAN YOU PLEASE COMMENT ON THE OTHER STATE PUBLIC
22 SERVICE DECISIONS RELIED UPON BY MR. LEHMKUHL ON PAGE
23 9 OF HIS TESTIMONY?

24

1 A. Yes. The Minnesota Commission's decision should not be followed
2 because that Commission, in contravention of the *UNE Remand Order*
3 and federal law, found that directory listings were still a UNE.²² The
4 decisions of the New York and Texas Commissions are equally
5 unpersuasive because they were both rendered prior to the FCC's 2001
6 *SLI/DA Order* and the Texas Order was rendered prior to FCC's finding
7 in the *UNE Remand Order* that directory listings was not a UNE.²³
8 Finally, the Washington Commission's decision does not require a
9 different conclusion because the Washington Commission, like the
10 CPUC, failed to limit TELRIC pricing to Section 251(c) UNEs, as
11 required by federal law.²⁴

12

13 Q. CAN YOU ALSO ADDRESS MR. LEHMKUHL'S RELIANCE ON A
14 COST STUDY BELLSOUTH FILED IN FLORIDA FOR DADS?

15

16 A. Yes. BellSouth performed the cost study in question in 1996, nearly 10
17 years ago, and prior to the FCC declaring that directory assistance

²² *In the Matter of the Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, MN Docket No. P-421/CI-01-1375, *Order Adopting ALJ Report, Requiring Customized Routing and Bulk Download, Establishing Rates, and Requiring Rate Schedules*, dated September 11, 2003 at pp. 21-22.

²³ See *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, NYPSC Case 98-C-1357, *Opinion and Order in Module 1 (Directory Database Services)*, issued and effective February 8, 2000 and *Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings issues under Federal Telecommunications Act of 1996*, TX Docket No. 19075, *Arbitration Award*, dated August 13, 1998.

²⁴ *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport and Termination*, Washington UTC Docket No. UT-003013, *Forty-Fourth Supplemental Order; Part D Final Order Establishing Nonrecurring and recurring rates for Unbundled Network Elements*, dated December 20, 2002.

1 listings are not UNEs. Thus, this prior cost study is irrelevant to the
2 Commission's determination today. In further support of this finding, it
3 should be noted MCI currently pays BellSouth's tariff rate for DADS.
4 Thus, MCI is hard-pressed to argue now that an antiquated and
5 inapplicable cost study submitted in 1996 is appropriate when MCI is
6 paying and has been paying BellSouth's tariffed rate for the same
7 service.

8

9 Q. DO YOU HAVE ANY COMMENTS ON WHY YOU BELIEVE MCI IS
10 SEEKING A TELRIC RATE FOR THE NEW AGREEMENT WHEN IT IS
11 PAYING BELL SOUTH'S TARIFFED RATE FOR DADS TODAY?

12

13 A. Yes. It appears that MCI is attempting to obtain BellSouth's product at
14 a cheaper rate via TELRIC pricing, even though it is not a UNE and the
15 application of TELRIC to a non-UNE violates federal law, solely to
16 create a greater profit margin when it resells BellSouth's DADS service
17 to other directory assistance providers.

18

19 ***Issue 33: How Should The Rate For The Calculation Of Late Payments***
20 ***Be Determined?***

21

22 Q. WHAT IS MCI'S POSITION AND HOW DO YOU RESPOND?

23

24 A. MCI's position is that late payment charges for each state must be set
25 forth in a "Pricing Appendix" that is included in the agreement or
26 "pursuant to Applicable Law", whichever is less. In contrast,

1 BellSouth's position is that late payment charges should be what are
2 set forth in BellSouth's tariffs.

3

4 Q. WHAT IS MCI'S MAIN OBJECTION TO BELLSOUTH'S PROPOSAL
5 AND CAN YOU ADDRESS THIS CONCERN?

6

7 A. MCI's main objection to BellSouth's proposal is that it believes
8 BellSouth will have the unilateral ability to change the applicable late
9 payment charge for services purchased under the agreement by
10 changing its tariff. MCI should not have this concern, however,
11 because all of the late payment charges set forth in BellSouth's tariffs
12 must comply with Applicable Law.

13

14 Additionally, in the event BellSouth attempts to revise its late payment
15 charge in its tariff to a rate that MCI opposes, MCI can object to any
16 proposed change. Thus, there are sufficient checks and balances in
17 place that protect MCI from being subject to a late payment charge that
18 exceeds Applicable Law.

19

20 Q. WHY DOES BELLSOUTH BELIEVE THAT IT IS NOT NECESSARY,
21 OR PROPER, FOR THE COMMISSION TO REQUIRE THAT THE
22 INTERCONNECTION AGREEMENT INCLUDE SPECIFIC LATE
23 PAYMENT CHARGE RATES?

24

25 A. First and foremost, BellSouth's late payment charges vary significantly,

1 by state, due to differing regulatory and financial factors and primarily
2 because the specific rates and structure of late payment charges are
3 frequently mandated by the individual state Commissions. As a
4 practical matter, therefore, BellSouth has limited influence on the late
5 payment charge rates and conditions in its individual state tariffs and
6 cannot unilaterally change its tariffs, as MCI fears.

7

8 ***Issue 34: What Terms And Conditions Apply To: (A) Nonpayment Of***
9 ***Past Due Billings And Additional Amounts That Become Past Due During***
10 ***Any Suspension? (B) Non Payment of a Requested Deposit?***

11

12 Q. WHAT IS MCI'S POSITION ON ISSUE 34(A) AND HOW DO YOU
13 RESPOND?

14

15 A. MCI Witness Darnell, on page 50, claims that BellSouth's terms and
16 conditions that apply to past due billings would allow BellSouth to
17 unilaterally discontinue service and take other actions in the event that
18 MCI does not pay an invoice on time. Mr. Darnell further states that
19 BellSouth could take such actions regardless of whether a payment is
20 disputed.

21

22 First, in an effort to resolve this issue, BellSouth agrees to not terminate
23 for nonpayment of disputed amounts. Accordingly, Mr. Darnell's
24 primary concern is resolved.

25

26 The remaining dispute concerning this issue centers on MCI's fear that

1 BellSouth may disconnect service to MCI “unilaterally and broadly”, as
2 Mr. Darnell terms on page 50 of his testimony.

3

4 Q. IS IT REASONABLE THAT BELLSOUTH WOULD DISCONNECT
5 SERVICE TO MCI “UNILATERALLY AND BROADLY” IN THE EVENT
6 A PAYMENT IS NOT ON TIME?

7

8 A. No. MCI appears to be concerned about a scenario where BellSouth
9 would render a bill to MCI for a specific account and then, for whatever
10 reason, the bill went unnoticed, and unpaid, by MCI and BellSouth then
11 disconnected service to the account before MCI could take any
12 corrective action. As a practical matter, particularly for an account the
13 size of MCI, BellSouth Service Representatives and MCI Service
14 Representatives are in conversations daily and, in many cases, multiple
15 times per day. Thus, it is highly unlikely that a payment by MCI would
16 be “missed” under such conditions, particularly given the standard
17 intervals between the time an account becomes past due and the time
18 that a CLEC’s service is actually discontinued.

19

20 Q. PLEASE DESCRIBE THE PROCESS BELLSOUTH FOLLOWS FROM
21 THE TIME AN ACCOUNT BECOMES PAST DUE UNTIL THE TIME
22 SERVICE IS DISCONTINUED IF NO PAYMENT IS RECEIVED.

23

24 A. My direct testimony, on page 41, describes how the frequent
25 communication between BellSouth and MCI should not produce any

1 "guesswork" with respect to what specific amounts MCI owes to
2 BellSouth at any given time:

3
4 A CLEC that fails to timely pay undisputed amounts that are
5 past due is provided with a (i) written notice of the amount
6 that must be paid to avoid suspension or termination; and (ii)
7 a spread sheet (also known as an aging report) that shows,
8 by billing account number, the current amount owed, the
9 past due amount owed, disputed amounts, and for the
10 CLECs' convenience, the total amount that has or will
11 become due, less disputed and current charges.
12 Additionally, the CLEC and BellSouth are in constant
13 communication during the cure period regarding the
14 nonpayment of past due amounts. Thus, there is no
15 guesswork by the CLEC regarding how much has to be paid
16 in order to avoid suspension or termination.

17
18 To illustrate the type of information exchange between BellSouth and a
19 CLEC, attached to my testimony as Exhibit PAT-8, is a series of emails
20 between BellSouth and a CLEC regarding the payment of amounts that
21 became past due. This data was provided in response to Staff's
22 interrogatory in the Joint Petitioner Arbitration (Docket No. 040130-TP)
23 and establishes that (1) BellSouth is in constant communications with
24 CLECs that fail to timely pay billings; and (2) the BellSouth's aging
25 report clearly identifies amounts that are past due, will become past due
26 during the cure period, and disputed amounts.

27
28 Q. DO YOU HAVE ANY MCI-SPECIFIC EVIDENCE TO ESTABLISH
29 THAT MCI AND BELLSOUTH ARE IN CONSTANT COMMUNICATION
30 REGARDING BILLINGS?

31

1 A. Yes. Attached to this rebuttal testimony as Exhibit PAT-9 are copies of
2 28 separate emails and other recent correspondence between
3 BellSouth's service representatives and MCI's representatives that
4 were exchanged between August 15, 2005 and October 28, 2005. That
5 span of time includes 55 business days, meaning that, on average,
6 there is at least one communication between BellSouth and MCI every
7 other day. As represented by the content of the attached
8 communications, it is clear that BellSouth and MCI frequently exchange
9 information and inquiries about a wide range of billing issues. Particular
10 to this arbitration issue, a number of the attached communications
11 reference outstanding invoices, adjustments, misapplied payments, and
12 general information about specific bills. It is obvious from this recent
13 group of emails and correspondence alone, that MCI's fears about an
14 invoice being lost or forgotten, resulting in discontinuance of service by
15 BellSouth, are unfounded.

16
17 Q. WITH RESPECT TO YOUR ABOVE TESTIMONY, WHAT ARE THE
18 SPECIFIC TIME INTERVALS ASSOCIATED WITH THE PROCESS
19 YOU DESCRIBE?

20
21 A. Because MCI purchases services from BellSouth that are billed out of
22 multiple billing systems, the collection process must be consistent for
23 each of the services purchased. For instance, MCI purchases access
24 services as well as services out of this agreement that are billed out of
25 CABS. In addition, MCI also purchases services out of this agreement

1 that are billed out of CRIS and IBS. However, as set forth in
2 BellSouth's most recent language, the net effect to MCI is that all of its
3 UNE services will be subject to a 15-day cure period with the right to
4 terminate after 30 days of nonpayment of undisputed billings.

5

6 Q. HAS THE COMMISSION ALREADY ADDRESSED THIS ISSUE?

7

8 A. Yes. In the MCI/BellSouth prior arbitration, Docket No. 000649-TP, the
9 Commission addressed this exact issue and held that:

10

11 BellSouth is within its rights to deny
12 service to customers that fail to pay
13 undisputed amounts within reasonable
14 time frames. Therefore, absent a good
15 faith billing dispute, if payment of
16 account is not received in the
17 applicable time frame, BellSouth shall
18 be permitted to disconnect service to
19 WorldCom for nonpayment.

20

21 FPSC Order No. PSC-01-0824-FOF-TP at 133.

22

23 Q. SHOULD BELLSOUTH BE ABLE TO TREAT MCI'S ACCOUNTS ON A
24 REGION-WIDE BASIS?

25

26 A. Yes. While the parties will file an agreement with each state
27 commission, the agreement is a regional agreement. The fact that MCI
28 may be delinquent in paying an account for services rendered in one
29 state should have no bearing on the fact that MCI is failing to comply
30 with its universal, region-wide payment obligations.

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MCI will likely argue that any termination rights should be limited to the state in which the services were rendered. Essentially, MCI is arguing that its failure to pay for services in one state should not preclude MCI from purchasing services in another state. Such an argument defies basic business principles and is akin to a credit card customer seeking to limit termination rights to only the state where the customer failed to make payment for services rendered. Thus, if a Shell credit card customer fails to pay for gas in Florida, under MCI's proposal, the customer would still have the right to purchase gas in other states. Of course, the Shell customer does not have such rights and neither should MCI.

Q. WHAT IS MCI'S POSITION ON ISSUE 34(B) AND HOW DO YOU RESPOND?

A. Issue 34(B) has been resolved by the parties.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

[DM #611549]

MCI WorldCom Communications/BellSouth INTERCONNECTION AGREEMENT

This Interconnection Agreement (the "Agreement"), effective _____, 2001 (the "Effective Date"), is entered into by and between BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, and MCI WorldCom Communications, Inc. ("MCIIm"), a Delaware corporation, and to establish the rates, terms and conditions for interconnection, local resale, ancillary services and purchase of unbundled network elements (individually referred to as the "Service" or collectively as the "Services"). BellSouth and MCIIm may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls ("Interconnection"); and

WHEREAS, MCIIm wishes to purchase Services for resale to others and BellSouth is willing to provide such service pursuant to the terms and conditions of this Agreement; and

WHEREAS, MCIIm wishes to purchase on an unbundled basis Network Elements, and BellSouth is willing to provide such Services subject to the terms and conditions of this Agreement; and

WHEREAS, MCIIm wishes to purchase ancillary services such as access to poles, ducts conduits and rights of way and collocation of equipment at BellSouth's facilities on the terms and subject to the conditions of this Agreement; and

WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), the applicable rules and regulations of the Federal Communications Commission ("FCC") in effect, and the orders, rules and regulations of the state regulatory body.

Now, therefore, in consideration of the terms and conditions contained herein, BellSouth and MCIIm hereby mutually agree as follows:

at its sole expense, but subject to the limitations of liability set forth below:

(i) modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or (ii) obtain a license sufficient to allow such use to continue. In the event (i) or (ii) are commercially unreasonable, then said Party may, (iii) terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

10.4 Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

10.5 The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

Section 11 Indemnification and Liability

11.1. Liability Cap.

11.1.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MCIIm, any MCIIm 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 MCIIm, any MCIIm 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 10 of this Agreement.

11.1.2 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 MCIIm 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, MCIIm'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 MCIIm; or 2) MCIIm's refusal to comply with the terms of this Agreement, provided that MCIIm'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 10 of this Agreement.

11.2 Neither Party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service.

11.3 Neither Party shall be liable for damages to the other Party's terminal location, Interconnection Point or the other Party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such Party's gross negligence or willful misconduct, or by a Party's failure properly to ground a local loop after disconnection using sound engineering principles.

11.4 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 10, supra, relating to intellectual property infringement.

11.5 Neither Party guarantees or makes any warranty with respect to its services when used in an explosive atmosphere. Each Party shall be indemnified, defended and held harmless by the other Party or the other Party's customer from any and all claims by any person relating to the other Party or the other Party's customer's use of services so provided.

11.6 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.

11.7 Both Parties agree that they, at their own cost and expense, shall maintain throughout the term of this Agreement, all insurance required by law or

required under this Agreement, and may at their own cost and expense purchase insurance or self-insure for their employer, public, professional and legal liabilities. No limit of liability on any policy, no program or self-insurance, nor any failure to maintain adequate insurance coverage shall limit the direct or indirect liability of either Party.

11.8 Insurance

11.8.1 Each Party shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article XI and underwritten by insurance companies licensed to do business in the states applicable under this Attachment and having a Best's Insurance Rating of A-VIII.

11.8.2 Each Party shall maintain the following specific coverage:

11.8.2.1 Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000). The other Party shall be named as an Additional Insured on the Commercial General Liability policy(s) as specified herein.

11.8.2.2 Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000) each accident, one hundred thousand dollars (\$100,000) each employee by disease, and five hundred thousand dollars (\$500,000) policy limit by disease.

11.8.2.3 MCIm shall maintain All Risk Property coverage on a full replacement cost basis insuring all of MCIm's real and personal property situated on or within BellSouth's Central Office location(s).

11.8.3. All policies purchased by either Party shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by the other Party. If either Party fails to maintain required coverage, the other Party may pay the premiums thereon and seek reimbursement of same from the Party failing to maintain required coverage. Required coverage must be effective upon execution of this Agreement.

11.8.4 Each Party shall submit certificates of insurance reflecting the coverage required pursuant to this Section within 30 days after execution of this Agreement. Failure to meet this interval may result in construction

and equipment installation delays. Each Party shall arrange for the other Party to receive thirty (30) days' advance notice of cancellation from an insurance company. Each Party shall forward a certificate of insurance and notice of cancellation/non-renewal to the other Party at the following addresses:

For BellSouth:

BellSouth Telecommunications, Inc.
Attn: Risk Management Coordinator
675 W. Peachtree Street
Rm. 17H53
Atlanta, Georgia 30375

For MCIIm:

To the general notice, provision in the Agreement.

11.8.5 For collocation, MCIIm must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations. BellSouth shall provide MCIIm with a list of all such recommendations when they are made.

11.8.6 Self-Insurance: If either Party's net worth exceeds five hundred million dollars (\$500,000,000), such Party may elect to request self-insurance status in lieu of obtaining any of the insurance required in subsections 11.8.2.1, 11.8.2.2 and 11.8.2.3. Such Party shall provide audited financial statements to the other Party. The other Party shall then review such audited financial statements and respond in writing to the Party desiring to self-insure in the event that self-insurance status is not granted to such Party. If self-insurance is approved, the self-insuring Party shall annually furnish to the other Party, and keep current, evidence of such net worth that is attested to by one of the self-insuring Party's corporate officers. The ability to self-insure shall continue so long as the self-insuring Party meets all of the requirements of this Section. If the self-insuring Party subsequently no longer satisfies this Section, such Party is required to purchase insurance as indicated by subsections 11.8.2.1, 11.8.2.2 and 11.8.2.3.

11.8.7 The net worth requirements set forth in subsection 8.7 may be increased by the non-self-insuring Party from time to time during the term of this Attachment upon thirty (30) days notice to the self-insuring Party.

11.8.8 Failure to maintain the insurance required in this Section will be deemed a material breach of this Attachment.

Section 12. Continuing Obligations

12.1 BellSouth agrees that Interconnection must be provided in a competitively neutral fashion, at any technically feasible point within its network as stated in this Agreement and that such interconnection must contain all the same features, functions and capabilities, and be at least equal in quality to the level provided by BellSouth to itself, its Affiliates, and other telecommunications carriers.

12.2 BellSouth agrees that it shall provide to MCIIm on a nondiscriminatory basis unbundled Network Elements and ancillary services as set forth in this Agreement and the operations support systems as set forth in this Agreement. BellSouth further agrees that these services, or their functional components, must contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the level which it provides to itself, its Affiliates, and other telecommunications carriers.

12.3. BellSouth agrees that it shall provide to MCIIm nondiscriminatory access to, poles, ducts, conduits, and rights of way owned or controlled by BellSouth in accordance with the requirements of Section 224 of the Act.

12.4 The Parties shall provide, in a competitively neutral fashion, INP and LNP as set forth herein and in accordance with the applicable rules, regulations and orders of the FCC and this Commission.

12.5 BellSouth agrees that it shall provide to MCIIm, in a competitively neutral fashion, dialing parity for local exchange service and interexchange service pursuant to the applicable rules, regulations and orders of the state regulatory body and the FCC in effect.

12.6 BellSouth agrees that order entry, provisioning, installation, trouble resolution, maintenance, billing, and service quality with respect to Local Resale must be provided at least as expeditiously as BellSouth provides for itself or for its own retail local service or to others, or to its Affiliates, and that it shall provide such services to MCIIm in a competitively neutral fashion.

12.7 BellSouth agrees that it shall provide on a nondiscriminatory basis space on its premises for physical or virtual collocation, as MCIIm may specify, for equipment necessary for MCIIm's interconnection and access to unbundled network elements.

Section 13. Notices

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 27, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 25
Cancels Second Revised Page 25
EFFECTIVE: January 12, 2005

A24. EMERGENCY REPORTING SERVICES

A24.2 BellSouth 9-1-1 PinPoint Service

A24.2.1 General

- A. 9-1-1 PinPoint Service allows a Private Branch Exchange (PBX) switch located on a customer's premises to be trunked directly into an E911 tandem office, delivering the telephone number and location of the PBX end user to the appropriate Public Safety Answering Point (PSAP). (T)
- B. 9-1-1 PinPoint Service is available with BellSouth Primary Rate ISDN (PRI) or *9-1-1 PinPoint Service* Local Channels as described in this section. *9-1-1 PinPoint Service* Local Channels are not required if using BellSouth PRI service. (T)

A24.2.2 Regulations

- A. 9-1-1 PinPoint Service is furnished subject to the availability of facilities. (T)
- B. Automatic Number Identification (ANI) which is passed to the Company E911 tandem office by the PBX switch is read, processed and utilized in the manner as if it is provided by any other serving end office in the Company's E911 system.
- C. The emergency agency serving the area may also be involved to update the Master Street Address Guide (MSAG) and to determine the method in which emergency calls from 9-1-1 PinPoint Service locations will be handled. (T)
- D. The following specifications must be met when provisioning this service:
 - 1. Subscribers to 9-1-1 PinPoint Service must meet all BellSouth technical specifications. (T)
 - 2. The PBX switch must be able to transmit ANI using multi-frequency signals. This may require the retro-fitting of existing PBX switches with interfaces which will work with the Company's E911 system.
 - 3. The PBX switch owner/operator must supply the Company with the initial telephone number-to-address data as well as periodic updates.
 - 4. 9-1-1 PinPoint Service is configured on a "per account" basis. All telephone numbers on a BellSouth Direct Inward Dial (DID) or Primary Rate ISDN (PRI) account equipped with 9-1-1 PinPoint Service must be provisioned with 9-1-1 PinPoint Service. The Customer cannot randomly select which telephone numbers on an account will have the Service. (N)
 - 5. Users of 9-1-1 PinPoint Service are prohibited from provisioning PBX station numbers outside the boundary of the E9-1-1 tandem serving the physical address of the main PBX location. 9-1-1 calls from any telephone numbers provisioned outside the boundary of the serving E9-1-1 tandem would be routed to an incorrect PSAP with no location information. An alternative arrangement could involve PRI terminations from multiple central offices to accommodate a wider geographic area. In that configuration, no PBX station numbers can be provisioned at addresses outside the boundary of the tandem serving the PRI host. The subscribing 9-1-1 PinPoint Service customer is responsible for ensuring that 9-1-1 PinPoint Service is provisioned in a compliant configuration that will ensure that 9-1-1 calls are routed correctly with the correct location information. (T)
 - 6. The PBX switch must employ BellSouth Direct Inward Dial (DID) or BellSouth PRI station numbers. If the PBX is serving subscribers with multiple NPAs, a unique PBX trunk group will be needed for each NPA (whether it be *9-1-1 PinPoint Local Channels* or PRI). *9-1-1 PinPoint Service is not available on Centrex or "Centrex-like" station numbers.* (C)
 - 7. It will be the responsibility of the vendor or PBX operator to maintain the data pertaining to each extension operating under such system. (T)
- E. The PBX switch owner/operator must install a minimum of two private E911 local channels (except for PRI) with the following specifications:
 - 1. This voice grade local channel provides for a communications path between the demarcation point at the customer premises and the serving E911 tandem.
 - 2. The PBX switch owner/operator is responsible for determining that *his* terminal equipment is compatible with this local channel.
 - 3. Supervision on this 9-1-1 PinPoint service Local Channel will be loop reverse battery. The battery source is located in the Company's network and will be a nominal -48V(-42.75V to -56.5V dc). (T)
 - 4. The PBX will signal an off hook (or seizure) by providing a loop closure across tip and ring with a maximum resistance of 670 ohms. The Company's serving E911 tandem office will instruct the PBX to forward the called digits "911" or "11" with a momentary battery reversal (wink). The E911 tandem will instruct the PBX to send the calling station's number (ANI) information with a battery reversal (off hook).
 - 5. Additional regulations may be applicable as described in Section B3. of the Company's Private Line Service Tariff.
 - 7. Required network interfaces are located in Section A14. of this Tariff. (M)

Material previously appearing on this page now appears on page(s) 26 of this section.

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 26
Cancels First Revised Page 26

ISSUED: December 27, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: January 12, 2005

A24. EMERGENCY REPORTING SERVICES

A24.2 BellSouth 9-1-1 PinPoint Service (Cont'd)

(T)

A24.2.2 Regulations (Cont'd)

- F. Service charges, as specified in Section A4. of this Tariff, are applicable. (M)
 - G. General Regulations located in Section A2. of this Tariff will also apply to this service offering. (M)
 - H. This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies and does not create any relationship or obligation, direct or indirect, to any person other than the customer contracting for 9-1-1 PinPoint Service. The provision of 9-1-1 PinPoint Service by the Company shall not be interpreted, construed, or regarded, either expressly or implied, as being for the benefit of or creating any Company obligation toward any third person or legal entity other than the customer. (T)
 - I. The rates charged for 9-1-1 PinPoint Service do not contemplate the constant monitoring or inspection of facilities to discover errors, defects and malfunctions in the service, nor does the Company undertake such responsibility. The customer shall make such operational tests as, in the judgement of the customer, are required to determine whether the service is functioning properly for its use. The customer shall promptly notify the Company in the event the service is not functioning properly. (T)
 - J. The Company's entire liability to any person for the interruption or failure of 9-1-1 PinPoint Service shall be limited to the terms set forth in this Section and other Sections of this Tariff. The Company shall neither be liable for damages resulting from or in connection with its provision of 9-1-1 PinPoint Service to any customer subscribing to 9-1-1 PinPoint Service or any person accessing or using 9-1-1 PinPoint Service and nor shall the Company be liable for its provision of any telephone number, address, or name to any entity providing 911 Service or to a public safety answering point, unless the Company acted with malicious purpose or in the manner exhibiting wanton and willful disregard of safety or property in providing such services. (T)
 - K. Each customer agrees to release, indemnify, defend and hold harmless the Company from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, or for any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of 9-1-1 PinPoint Service features and the equipment associated therewith, or by any services which are or may be furnished by the Company in connection therewith, including but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing 911 services using 9-1-1 PinPoint Service hereunder, and which arise out of the negligence or other wrongful act of the Company, the Customer, its user agencies or municipalities or employees or agents of any one of them. (T)
 - L. Each Customer is responsible for assuring that its authorized users comply with the provisions of these terms and the tariffs and that unauthorized persons do not gain access to or use the Services through user names, passwords, or other identifiers assigned to the Customer pursuant to these terms. Specifically, each Customer must keep user IDs, passwords, and any security token(s) that may be provided secure from use by any unauthorized individual. The Customer shall also not use the Services in any way that would be or would assist any third party to be in violation of any law or these terms. Each Customer shall comply with all applicable laws, rules, and regulations in connection with the Services. Finally, the Customer shall provide such information and assistance as are reasonably requested by BellSouth for purposes of facilitating BellSouth's provision of Services to the Customer. (N)
- (M)

Material appearing on this page previously appeared on page(s) 25 of this section.
Material previously appearing on this page now appears on page(s) 26.1 of this section.

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BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 27, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 26.1

EFFECTIVE: January 12, 2005

A24. EMERGENCY REPORTING SERVICES

A24.2 BellSouth 9-1-1 PinPoint Service (Cont'd)

(N)

A24.2.2 Regulations (Cont'd)

(N)

- M.* When an order for 9-1-1 PinPoint Service and facilities or requests for additions, rearrangements, relocations or modifications or service and equipment are canceled in whole or in part, the customer may be required to reimburse the Company for all expenses incurred in handling the requests before notice of cancellation is received. Such charges, however, are not to exceed all charges which would apply if the work involved in complying with the request had been completed. (M)(T)
- N.* When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the subscriber or the failure of the facilities provided by the subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed as covered by Section A2. of this Tariff. (M)(T)
- O.* In the event of any interruption of the service the Company shall not be liable to any person, corporation or other entity for any loss or damage in an amount greater than an amount equal to the pro rata allowance of the tariff rate for the service or facilities provided to the customer for the time such interruption continues, after notice to the Company. No allowance shall be made if the interruption is due to the negligence or willful act of the customer of the service. (M)(T)
- P.* Other Rules and Regulations located in A24.1. preceding will also apply to this service offering as appropriate. (M)(T)

Material appearing on this page previously appeared on page(s) 26 of this section.

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: December 27, 2004
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 27
Cancels Original Page 27

EFFECTIVE: January 12, 2005

A24. EMERGENCY REPORTING SERVICES (T)

A24.2 BellSouth 9-1-1 PinPoint Service (Cont'd) (T)

A24.2.3 Payment Schedules (T)

A. General (T)

9-1-1 PinPoint Service is offered for a 60 month contract period at the rates and charges indicated in this sub-section. 9-1-1 PinPoint Service disconnected prior to 60 months will be subject to cancellation charges. (T)

B. Transfer of Contract

Service may be transferred to a new subscriber at the same location upon prior written concurrence by the new subscriber as specified in Section A2. of this Tariff.

C. Deferred Payment

Nonrecurring charges may be deferred or installment billed as specified in Section A2. of this Tariff.

D. Prepayment

Recurring charges may be prepaid as specified in Section A2. of this Tariff.

E. Cancellation Charges

Cancellation charges will be applied where service is removed prior to the expiration of the 60 month contract period.

F. Moves of Service

1. When the PBX owner/operator moves 9-1-1 PinPoint Service: (T)

a. Cancellation charges do not apply

b. 60 month rates in effect will continue uninterrupted

c. 9-1-1 PinPoint Service nonrecurring charges do not apply. (T)

d. 9-1-1 PinPoint Service local channel charges apply as appropriate. (T)

A24.2.4 Rates and Charges

A. 9-1-1 PinPoint Service (T)

1. Installation Charge, Per Customer

	Nonrecurring Charge	Monthly Rate	USOC
(a) Up to 1,000 station records, per customer	\$3,600.00	\$-	E8YN1
(b) 1,001 to 4,000 station records, per customer	4,800.00	-	E8YN2
(c) 4,001 or more station records, per customer	5,900.00	-	E8YN3
2. 60 Month Contract Period - Monthly Charges, per 1,000 records			
(a) Up to 1,000 station records, per 1,000 records	-	178.00	E8Y61

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 28

ISSUED: July 1, 1996
BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: July 15, 1996

A24. EMERGENCY REPORTING SERVICES¹

(N)

A24.2 9-1-1 PinPoint* Service (Cont'd)

A24.2.4 Rates and Charges (Cont'd)

A. 9-1-1 PinPoint* Service (Cont'd)

2. 60 Month Contract Period - Monthly Charges, per 1,000 records (Cont'd)

	Nonrecurring Charge	Monthly Rate	USOC
(b) 1,001 to 4,000 station records, per 1,000 records	\$-	\$155.00	E8Y62
(c) 4,001 or more station records, per 1,000 records	-	130.00	E8Y63
B. 9-1-1 PinPoint* Service Local Channels			
1. Per Channel			
(a) First channel, each	475.00	-	E8YCT
(b) additional channels, each	105.00	-	E8YCU
(c) Each channel	-	55.00	E8YCV
C. Cancellation Charges			
1. The following charge is incurred when a total disconnect of 9-1-1 PinPoint* service occurs during the 60 month contract period.			
(a) Per system disconnect	2,500.00	-	E8YDX

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.



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What can we do for you?

Customer-Focused Solutions

- Understanding Your Business
- World-Class Services
- Customized Networking Delivery

Innovative Technology

- VoIP-Powered
- Virtual Call Center Architecture
- Network Monitoring
- Connectivity Partners
- Human Engineering

More Than

“What City & State Please...”

- The Industry’s Best Call Center Staff
- Text DirectSM & SMS DA
- Speech Recognition 411
- Data Quality & Quantity

Unique Industry Position

- Independence—and Freedom
- Stable, Safe & Sound
- Constant Quality

ABOUT INFONXX

[Our People](#) | [Our History](#) | [Our Name](#) | [Our Company](#)

INFONXX is the world’s premier provider of directory assistance and enhanced information services.

INFONXX provides wireless and landline carriers, corporations, and educational institutions throughout North America with innovative customer-focused solutions, flexible service transport options, and industry-leading products.

The largest independent directory assistance supplier in the world, INFONXX has consistently ranked among the best in the industry in all aspects of customer service. In the United Kingdom, **The NumberTM 118-118** has become Britain’s leading directory assistance service for consumers and businesses.

Based in Bethlehem, Pennsylvania, INFONXX employs thousands of customer service representatives and support personnel who manage over 210 million listings at 10 locations around the globe. INFONXX handles 500 million directory assistance calls each year.

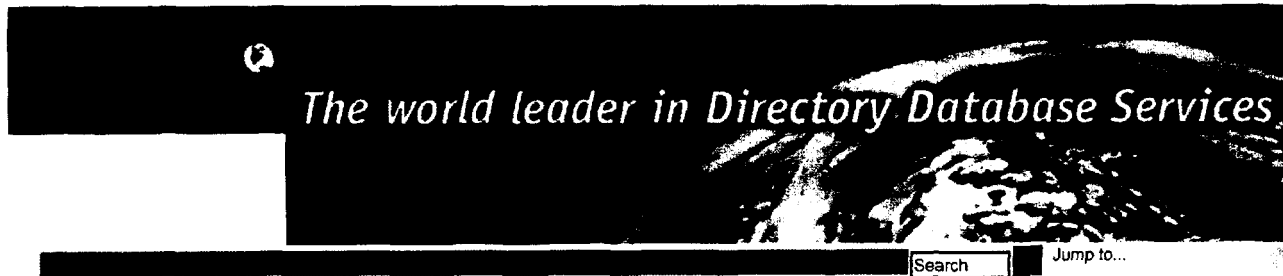
Contact INFONXX today to learn how the world’s premier provider of directory assistance and enhanced information services can develop a solution for you.



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About LSSi Corp.

- ▶ LSSi: The world-leader in developing advanced directory databases.
- ▶ LSSi technology is unrivaled in speed and accuracy.
- ▶ LSSi is growing fast, on many fronts.
- ▶ Where to find LSSi.
- ▶ A unique foundation of talent and experience.
- ▶ Accurate directory data is important!
- ▶ How LSSi maintains such a high level of accuracy.

■ LSSi: The world-leader in developing advanced directory databases.

LSSi builds, markets and supports advanced national and international directory database solutions for directory assistance service providers and corporate clients.

As the world becomes more and more connected, LSSi is ideally positioned as the world's best source for the information that lets those connections happen.

[\[Return to Top\]](#)

■ LSSi technology is unrivaled in speed and accuracy.

The LSSi database is the only national directory database in the world that is thoroughly refreshed every single business day throughout the year. This immense task is achieved with electronic feeds that capture all service order additions, deletions and changes made the previous day by our myriad data suppliers.

LSSi's state-of-the-art proprietary software is at the heart of this accomplishment. Our extremely accurate core database is both built and accessed through this advanced software, designed specifically by LSSi to produce extraordinarily fast searches, maximum efficiency, and substantially lower operating costs for our customers.

LSSi also provides customized intelligent network services. These services:

- reduce operator costs
- increase revenue
- enhance customer satisfaction

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■ **LSSi is growing fast, on many fronts.**

LSSi is now a supplier to every major U.S. telephone company. We have developed a strong international presence, with supply contracts or evaluations proceeding in numerous international telephone markets. LSSi has also introduced a suite of products to increase the efficiency and productivity of Directory Assistance in corporations and other large organizations.

LSSi also has a growing presence on the Internet with our e-business support services.

- We are an e-commerce enabler, permitting companies engaged in on-line commerce to perform extremely fast, up-to-date credit checks and identity verifications to speed transactions and improve their customer service.

- LSSi and our technology partners are developing products for e-screening, which gives a person a pop-up screen when they are on-line but get an incoming call. The pop-up screen tells them who is calling. If they choose to, they can accept the call while remaining on-line.

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■ **Where to find LSSi.**

Our corporate headquarters are in Edison, New Jersey, USA (click [here](#) for map and directions). We also operate development resources and data centers located in Morrisville, North Carolina (click [here](#) for map and directions), Waynesboro, Virginia, and Lamezia Terme, Italy.

[\[Return to Top\]](#)

■ **A unique foundation of talent and experience.**

The LSSi team boasts the most capable independent concentration of Directory Assistance Skills available today. Our people include:

- telephone experts
- database experts
- networking experts

When you contact LSSi, you're not talking to people whose background is in list management or some other professional area unrelated to the task at hand. You're talking to people with a solid understanding of your situation.

Here are just a few examples of the talent and experience working for you at LSSi:

- Designed, developed, and installed the first audio response units used by telephone companies to automate the announcement of target telephone listings retrieved by DA operators. These audio systems are used by most telephone companies in the US.
- Pioneered the development and deployment of the intelligent (PC-based) workstation for use by DA operators.
- Developed and implemented the most frequently used systems for performing intercepts, including customized announcements.
- Developed systems now in use to automatically complete DA and intercept calls, including screening such calls for eligibility (inter-LATA vs. intra-LATA).
- Have extensive worldwide experience in both the marketing and selling of DA systems.
- Have extensive experience in installing DA systems and optimizing performance.
- Have extensive experience in managing telephone company DA operations and selecting vendor systems to provide DA support.

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■ **Accurate directory data is important!**

Inaccurate data slows down searches. The special intervention it requires by operators and supervisors adds heavily to operating costs.

Delays and wrong numbers also frustrate and upset customers. They make 8 billion calls a year for Directory Assistance. In an intensely competitive market, making customers unhappy is a very serious problem, indeed.

Fresh Data: the Key to LSSi's Accuracy

When you find a telephone number in the phone book, you're looking at data that is actually quite old.

- The number was provided to the publisher long before the book itself was even printed.
- The information becomes more and more stale as listings and numbers change.

On the other hand, when a phone line is installed and it is assigned a brand new number, the "service order" submitted by the installer is fresh and accurate. Updating with service-order-level listings and other highly accurate directory data -- and updating it daily -- is a key to the extraordinary accuracy of the LSSi database.

LSSi licenses complete residence, government, and business service-order-level data from highly reliable sources, such as the Regional Bell Operating Companies, GTE, Sprint Local, and other Incumbent Local Exchange Companies.

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■ **How LSSi maintains such a high level of accuracy.**

Producing the world's most accurate directory databases requires very sophisticated software and the capacity to handle huge amounts of data quickly and efficiently.

The 250 million listings in LSSi's 22 source files are updated each day with feeds received in a wide variety of formats from LSSi's many licensors. Proprietary LSSi software, using the full capability of state-of-the-art symmetric processors (SMP's), creates high-speed data-building engines of immense capacity to reformat this incoming data for optimal storage and maximum search speed.

The most accurate numbers are selected for a database of 150 million optimized listings, which become the active LSSi on-line database, available to service inquiries.

This entire process is repeated daily. LSSi produces a brand-new, thoroughly refreshed directory database every single business day throughout the year.

Unrivaled Search Speed

Accurate listings are only part of what customers want. They also want those listings fast. Directory Assistance service providers want fast searches, too, to improve service times and reduce operating costs.

A variety of proprietary database features and search techniques are used to maximize search speed, delivering sub-second response times in nearly 99% of all searches.

LSSi's software exploits the Symmetric Multi-Processor's full capability in processing a user's request.

- When a caller seeks the number (or numbers) for someone over a large area such as an entire state, the search software can simultaneously query all the candidate cities' data.
- Numerous markers or "aliases" are attached to each entry, so it can be called up by a wide range of search arguments. A set of even vague cues can be quickly recognized as indicating a particular listing.
- Locality spellings are normalized, so incorrect spellings will still identify their target locations.
- Latitude and longitude data are used to specify the locale of a city/area name, permitting geographic expansion of searches, if needed.

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