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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *W*

RE: DOCKET NO. 991755-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC AND MCI WORLDCOM COMMUNICATIONS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR BREACH OF APPROVED INTERCONNECTION AGREEMENT.

14-1-PTO

Attached is a Prehearing Order to be issued in the above-referenced docket. (Number of pages in order - 13)

TV/sa
Attachment
cc: Division of Competitive Services (Hinton)
I:991755po.tv

MUST GO TODAY

FAXED 3/10

Doc. #09470-00

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of MCImetro
Access Transmission Services LLC
and MCI WorldCom Communications,
Inc. against BellSouth
Telecommunications, Inc. for
breach of approved
interconnection agreement.

DOCKET NO. 991755-TP
ORDER NO. PSC-00-1431-PHO-TP
ISSUED: August 4, 2000

Pursuant to Notice and in accordance with Rule 28-106.209,
Florida Administrative Code, a Prehearing Conference was held on
August 2, 2000, in Tallahassee, Florida, before Chairman J. Terry
Deason, as Prehearing Officer.

APPEARANCES:

Richard D. Melson, Esquire, Hopping Green Sams & Smith,
P.A., P. O. Box 6526, Tallahassee, FL 32314
On behalf of MCImetro Access Transmission Services, LLC
and MCI WorldCom Communications, Inc.

Dulaney L. O'Roark, III, Esquire, MCI WorldCom, Inc., Six
Concourse Parkway, Suite 3200, Atlanta, GA 30328
On behalf of MCImetro Access Transmission Services, LLC
and MCI WorldCom Communications, Inc.

Donna C. McNulty, Esquire, MCI WorldCom, Inc. 325 John
Knox Road, The Atrium, Suite 105, Tallahassee, FL 32303
On behalf of MCImetro Access Transmission Services, LLC
and MCI WorldCom Communications, Inc.

Nancy B. White, Esquire, BellSouth Telecommunications,
Inc., 150 South Monroe Street, Room 400, Tallahassee, FL
32301
On behalf of BellSouth Telecommunications, Inc.

Timothy Vaccaro, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

09470 AUG-48

(PSC) RECORDS REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On November 23, 1999, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (MCI and MWC, respectively, or jointly referred to as WorldCom) filed a complaint for arbitration regarding interconnection agreements with BellSouth Telecommunications, Inc. (BellSouth). Accordingly, this matter has been scheduled for an administrative hearing.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct/Rebuttal</u>		
Mark Argenbright	MCIm and MCW	All
Cynthia Cox	BellSouth	All

VII. BASIC POSITIONS

MCIm and MWC: MCIm's and MWC's local switches terminate calls throughout geographic areas that are comparable in size to the areas served by BellSouth's tandem switches. MCIm and MWC have therefore been entitled since the Supreme Court's January 25, 1999 decision to be compensated for terminating local calls from BellSouth customers to MCIm or MWC customers at a rate equal to the sum of the tandem interconnection rate and the end office interconnection rate. The Commission should require BellSouth to amend its Interconnection Agreements with MCIm and MWC to reflect this compensation provision and should require BellSouth to credit MCIm and MWC for its underpayments to them since January 25, 1999.

BELLSOUTH: The issue in this docket concerns a dispute between BellSouth and MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (jointly "WorldCom") as to whether the terms of their Interconnection Agreement should be amended as a result of the reinstatement of FCC Rule 51.711. BellSouth's interpretation of the Interconnection Agreement reflects the intentions and agreements of the parties and is the more consistent with Florida law. Further, BellSouth's interpretation of FCC Rule 51.711 is more consistent with Federal law and court decisions interpreting the Rule. Therefore, the Florida Public Service Commission ("Commission") should sustain BellSouth's position.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Under FCC Rule 51.711, would MCIm and MWC be entitled to be compensated at the sum of the tandem interconnection rate and the end office interconnection rate for calls terminated on their switches if those switches serve a geographic area comparable to the area served by BellSouth's tandem switches?

POSITIONS

MCIm and MWC: Yes. Under FCC Rule 51.711 and the FCC's Local Interconnection Order, MCIm and MWC are automatically entitled to receive the tandem interconnection rate in addition to the end office interconnection rate when their switches serve a geographic area comparable to the area served by BellSouth's tandem switch.

BELLSOUTH: The FCC identified two requirements that WorldCom must satisfy in order to be compensated at the tandem interconnection rate: (1) WorldCom's switch must perform functions similar to those performed by BellSouth's tandem switch; and (2) WorldCom's switch must serve a geographic area comparable to the geographic area served by BellSouth. WorldCom fails to show that it satisfies the geographic area prong of the test and does not even allege in the Complaint that it meets the functionality prong.

Further, in accordance with FCC Rule 51.711 and prior Orders of this Commission, as well as the plain language in the current BellSouth/WorldCom Interconnection Agreement, WorldCom should be compensated only for those functions WorldCom actually performs. If a switch is not used to

provide a tandem function during a specific call, it is not appropriate to pay reciprocal compensation for the tandem switching function. In short, WorldCom should only be compensated for the functions that it provides.

STAFF: Staff takes no position at this time.

ISSUE 2: Do MCI's and MWC's switches serve geographic areas comparable to those served by BST tandem switches?

POSITIONS

MCI and MWC: Yes. The geographic areas served by MCI's single switch in the Orlando area and the MCI and MWC switches in Miami and Pompano Beach areas are comparable to those served by BellSouth's tandem switches in those areas.

BELLSOUTH: Preliminarily, BellSouth notes again that this issue only addresses one prong of a two-prong test that must be satisfied in order for WorldCom to receive reciprocal compensation based on a tandem switching rate. Moving beyond that, BellSouth notes that according to the FCC's Rule 51.711(a)(3), to establish that WorldCom's switch serves a geographic area comparable to that served by the ILEC's tandem switches, WorldCom must show the particular geographic area its switch actually serves, not the geographic area that its switch may be capable of serving. WorldCom has not offered any proof that its switch currently serves areas comparable to BellSouth's tandem and, therefore, has failed to satisfy its burden of proof on this issue.

STAFF: Staff takes no position at this time.

ISSUE 3: Should BellSouth be required, pursuant to Part A Section 2.2 or 2.4 of the interconnection agreement, to execute amendments to its interconnection agreements with MCI and MWC requiring BellSouth to compensate MCI and MWC at the sum of the tandem interconnection rate and the

end office interconnection rate for calls terminated on their switches that serve a geographic area comparable to the area served by BellSouth's tandem switches?

POSITIONS

MCIm and MWC: Yes. The compensation provisions of the existing MCIm/BellSouth and MWC/BellSouth Interconnection Agreements are unlawful under the reinstated FCC Rule 51.711 because they do not provide reciprocal compensation when MCIm and MWC terminate calls throughout areas comparable to those served by BellSouth's tandem switches. These provisions must therefore be amended under the change-of-law provisions of the Interconnection Agreements.

BELLSOUTH: There is nothing in FCC Rule 51.711 that conflicts with the express provisions of the current BellSouth/WorldCom Interconnection Agreement. The essence of the language contained in Part A, Section 2.2 and Section 2.4 is that the parties will negotiate amendments to any provisions that are made unlawful by the promulgation of any rules, regulations, orders issued by the FCC or this Commission. Contrary to WorldCom's assertion, there are no provisions in the current agreement that are made "unlawful" by the reinstatement of the FCC Rule 51.711.

Section 2.4.2 in Part IV of the current Interconnection Agreement clearly provides that BellSouth will compensate WorldCom at the appropriate symmetrical interconnection rate(s) for each function WorldCom actually performs in terminating local traffic from BellSouth. This provision comports with FCC Rule 51.711(a)(1), which addresses symmetrical rates as being equivalent rates that two carriers assess upon each other for providing the same services for the transport and termination of local telecommunications traffic received from the other carrier. Thus, there is nothing inconsistent, much less "unlawful," between the provisions of the Interconnection Agreement and FCC Rule 51.711.

STAFF: Staff takes no position at this time.

ISSUE 4: Are MCIm and MWC entitled to a credit from BellSouth equal to the additional per minute amount of the tandem interconnection rate from January 25, 1999 to the earlier of (i) the date such amendments are approved by the Commission, or (ii) the date the interconnection agreements are terminated?

POSITIONS

MCIm and MWC: Yes. The Supreme Court's decision on January 25, 1999 effected a change of law which entitled MCIm and MWC have their Interconnection Agreements amended to provide for reciprocal compensation. BellSouth refused to agree to such amendments. The Commission should therefore require that the agreements be amended, and should require BellSouth to provide a credit for amounts underpaid since January 25, 1999.

BELLSOUTH: BellSouth has appropriately paid WorldCom for terminating BellSouth's local traffic. This payment has been made consistent with FCC Rule 51.711, prior Commission Orders and the current Interconnection Agreement. In no situation is it appropriate for this Commission to require BellSouth to pay or credit monies to WorldCom for transport and termination functions when those functions are not provided, regardless of the geographic area WorldCom's switch may serve. However, should the Commission determine that WorldCom's switch performs the tandem switching function and serves a geographic area comparable to BellSouth's tandem switches, any obligation to pay WorldCom the tandem switching rate should be prospective only from the date WorldCom requested an amendment to the Interconnection Agreement.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct/Rebuttal</u>			
Mark Argenbright	MCIIm and MWC	MEA-1	Letter dated July 8, 1999 from Bryan Green to Pat Finlen
		MEA-2	Letter dated July 30, 1999 from Pat Finlen to Bryan Green
		MEA-3	Letter dated August 10, 1999 from Bryan Green to Pat Finlen
		MEA-4	Letter dated November 18, 1999 from Pat Finlen to Bryan Green
		MEA-5	MCI WORLDCOM Rate Centers and Switches in the Orlando Market
		MEA-6	MCI WORLDCOM Rate Centers and Switches in the Miami / Ft. Lauderdale Market

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		MEA-7	North Carolina Recommended Arbitration Order in Docket No. P- 500, Sub 10 (April 20, 2000)
		MEA-8	Ohio Arbitration Award in Case No. 96-888-TP- ARB (January 1, 1997)
		MEA-9	Washington Arbitrator's Report and Decision in Docket No. UT- 980370 (March 22, 1999)
<u>Rebuttal</u>			
Cynthia Cox	BellSouth	CKC-1	Maps of BellSouth's Tandems in the Orlando and Southeast LATAs

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

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XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

MCIIm and MWC have filed a claim of confidentiality for information contained on pages 11 and 12 of Witness Argenbright's prefiled rebuttal testimony, pursuant to Section 364.183(1), Florida Statutes. This information has been identified as Document No. 08665-00 by the Division of Records and Reporting.


XIII. RULINGS

Each party will be permitted ten minutes to make opening statements.

It is therefore,

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman J. Terry Deason as Prehearing Officer, this 4th day of August, 2000.


J. TERRY DEASON
Chairman and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.