

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314

(904) 222-7500

FAX (904) 224-8551

FAX (904) 425-3415

Writer's Direct Dial No.
(904) 425-2313

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JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
ELIZABETH C. BOWMAN
RICHARD S. BRIGHTMAN
PETER C. CUNNINGHAM
RALPH A. DeMEO
THOMAS M. DeROSE
WILLIAM H. GREEN
WADE L. HOPPING
FRANK E. MATTHEWS
RICHARD D. MELSON
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
GARY P. SAMS
ROBERT P. SMITH
CHERYL G. STUART

GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
ANGELA R. MORRISON
GARY V. PERKO
KAREN M. PETERSON
MICHAEL P. PETROVICH
R. SCOTT RUTH
W. STEVE SYKES
T. KENT WETHERELL, II

OF COUNSEL
W. ROBERT FOKES

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket 961230-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation and MCI metro Access Transmission Services, Inc. (collectively, "MCI") are the original and 15 copies of rebuttal testimony of: Don Price, Don Wood, Jerry Murphy, Ronald Martinez, Richard Cabe, and Greg Darnell.

By copy of this letter, these documents have been furnished to the parties on the attached service list.

Very truly yours,



Richard D. Melson

RDM/cc
Enclosures
cc: Parties of Record

Price 12359-96
Wood 12360-96
Murphy 12361-96
Martinez 12362-96
Cabe 12363-96
Darnell 12364-96

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery or by UPS Overnight Delivery (*) this 19th day of November, 1996.

Jerry M. Johns (*)
United Telephone Co. of Fla.
Central Telephone Co. of Fla.
555 Lake Border Drive
Apopka, FL 32703

John P. Fons
J. Jeffry Wahlen
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, FL 32301

Martha Carter Brown
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Richard D. Me

Attorney

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REBUTTAL TESTIMONY OF DON PRICE
ON BEHALF OF
MCI TELECOMMUNICATIONS CORPORATION AND
MCImetro ACCESS TRANSMISSION SERVICES, INC.
DOCKET No. 961230-TP
November 19, 1996

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don Price, and my business address is 701 Brazos, Suite 600, Austin, Texas, 78701.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by MCI Telecommunications Corporation in the Southern Region as Senior Regional Manager -- Competition Policy.

Q. ARE YOU THE SAME DON PRICE WHO HAS PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of this testimony is to rebut certain statements and allegations made in the testimony of Sprint/United witness Michael Hunsucker regarding miscellaneous contract provisions and certain ancillary services.

ACK _____
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CMU the file
CTR _____
EAG _____
LEG 2
LIN 5
OPC _____
RCH _____
SE 1
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1 **MISCELLANEOUS PROVISIONS**

2

3 **General Contract Language**

4 Q. MR. HUNSUCKER ATTACHED TO HIS TESTIMONY AS EXHIBIT MRH-
5 3 SPRINT/UNITED'S PROPOSED CONTRACT. WHAT ARE YOUR
6 GENERAL OBSERVATIONS REGARDING THAT PROPOSED
7 CONTRACT?

8 A. I am not commenting on the specifics contained in the Sprint/United
9 proposed contract. However, I would generally note that the contract
10 has significantly less detail than is needed to establish a workable
11 business relationship between Sprint/United and MCI. The
12 Sprint/United proposed contract contains little more than general
13 principles. If such a contract was all that existed to govern the
14 companies' business relationship, the companies would need to
15 continually negotiate the numerous details that are needed on a day-
16 to-day basis for the conduct of business. Further, the absence of
17 such detail in a "bare bones" contract would create a significantly
18 greater likelihood that disputes would arise, some of which ultimately
19 could be brought back to this Commission for resolution.

20 I would refer the Commission to MCI's contract form, which
21 was attached as an exhibit to MCI's Petition, for appropriate contract
22 language and level of detail.

23

24 **"Most Favored Nations" Conditions**

25 Q. Have you read Mr. Hunsucker's testimony regarding Sprint's proposed

1 "most favored nations" language?

2 A. Yes, and I have also reviewed the specific language set forth at
3 Exhibit MRH - 4.

4

5 Q. What is MCI's reaction to Sprint's proposed language?

6 A. There does not appear to be a substantive disagreement between the
7 companies on this issue. The companies should be able to negotiate
8 mutually acceptable contract language without requiring a
9 Commission ruling on the point.

10

11 **Performance Metrics and Service Standards**

12 Q. DO MCI AND SPRINT APPEAR TO BE IN AGREEMENT ON
13 PERFORMANCE METRICS AND SERVICE STANDARDS?

14 A. We appear to agree on a conceptual level, but not on the details. For
15 example, Mr. Hunsucker states that Sprint will provide MCI with the
16 same quality of service that Sprint provides to its own customers.
17 (Page 27) He does not, however, address the specific performance
18 measurements and monitoring procedures necessary in a carrier-carrier
19 or carrier-reseller situation. Appendix VIII to the MCI/metro/ILEC
20 Interconnection Agreement attached as Exhibit 2 to MCI's Petition
21 contains numerous provisions relating to measuring and monitoring
22 quality of service. These provisions are tailored to meet the
23 requirements in a carrier-carrier environment. They reflect the
24 appropriate level of detail that must be included in the final arbitrated
25 agreement in order to ensure fair competition.

1 **Limitation of Liability**

2 Q. SECTION XXVI OF EXHIBIT MRH-3 TO MR. HUNSUCKER'S
3 TESTIMONY CONTAINS SPRINT'S PROPOSED LIMITATION OF
4 LIABILITY PROVISION. IS THIS AN APPROPRIATE CONTRACTUAL
5 PROVISION?

6 A. No, it is not. Under this language, Sprint would be held completely
7 harmless from any consequential damages or lost profits suffered by
8 MCI in the event that Sprint fails to meet its obligations under the
9 agreement.

10 The language in Section 12 of the MCImetro/ILEC
11 Interconnection Agreement attached as Exhibit 2 to MCI's Petition is a
12 much more appropriate liability provision. Under MCI's language,
13 each party is responsible for the natural consequences of its actions in
14 the event that it repeatedly breaches one or more of its material
15 obligations under the agreement. Without this type of provision,
16 Sprint could repeatedly breach the agreement -- for example by
17 repeatedly missing due dates for interconnection facilities by a
18 significant amount -- with absolutely no liability for the damages
19 suffered by MCI.

20

21 Q. WHY IS IT IMPORTANT TO INCLUDE THIS TYPE OF PROVISION FOR
22 CONSEQUENTIAL DAMAGES?

23 A. There are two reasons. First, Sprint is the sole source of supply for
24 the interconnection services, unbundled network elements, and resold
25 services that MCI will purchase. If Sprint fails to meet its obligations

1 under the agreement, MCI cannot turn to an alternate supplier to
2 mitigate its losses. Second, because Sprint is both a supplier and a
3 competitor, any lost profits to MCI will typically represent retained
4 profits to Sprint. For example, if Sprint repeatedly misses due dates
5 for turning up resold services, MCI will lose revenues from the resale
6 customers, while Sprint will continue to receive revenues from those
7 customers. Similarly, if Sprint fails to provide interconnection service
8 that meets the standards in the agreement, that failure will impair the
9 quality of service that MCI is able to provide to its customers.

10 In this situation, MCI's reputation as a quality provider will be
11 damaged, and Sprint will benefit from retaining or regaining customers
12 who otherwise would have chosen MCI. Unless Sprint is held
13 responsible for the foreseeable consequences of its actions, it will
14 have no financial incentive to live up to its obligations under the
15 agreement.

16
17 **Sub-Loop Unbundling**

18 Q. WHAT IS YOUR REACTION TO MR. HUNSUCKER'S
19 REPRESENTATION AT PAGE 12 THAT LOOP DISTRIBUTION SHOULD
20 NOT BE ARBITRATED IN THIS PROCEEDING?

21 A. Mr. Hunsucker has misrepresented MCI's position with respect to
22 loop distribution. MCI continues to urge this Commission to find that
23 it is technically feasible for Sprint/United to offer loop distribution. It
24 is true that MCI removed the loop distribution issue from its
25 negotiations with Sprint/United. MCI's purpose in so doing, however,

1 was to facilitate discussion of other issues on which progress could
2 be made, because there did not appear to be any hope of bringing the
3 loop distribution issue to closure. It is my understanding that we
4 made it quite clear that we would seek a ruling from the Commission
5 on the question of technical feasibility, as such a ruling was necessary
6 for there to be any possibility of fruitful negotiations on the loop
7 distribution issue.

8

9 Q. DO YOU AGREE WITH MR. HUNSUCKER THAT A "BFR" PROCESS IS
10 APPROPRIATE FOR UNBUNDLED LOOP DISTRIBUTION?

11 A. No. MCI is presenting in this proceeding sufficient facts upon which
12 the Commission can render a decision on the question of technical
13 feasibility. Such a decision would place the appropriate obligation on
14 Sprint/United to make loop distribution available on an unbundled
15 basis to MCI. If in a particular location, Sprint/United is unable to
16 provide loop distribution to MCI, it could render that objection at the
17 time a request is made by MCI for that location, and the Commission
18 could, if necessary, deal with that on an exception basis.

19

20 **ANCILLARY SERVICES/ARRANGEMENTS**

21

22 **Branding**

23 Q. WHAT ARE YOUR CONCERNS WITH SPRINT/UNITED'S POSITION
24 REGARDING THE ISSUE OF BRANDING?

25 A. Mr. Hunsucker seems to confuse the issue of technical feasibility with

1 the current capability for Sprint to provide branding for operator
2 services and directory assistance. Technical feasibility is a concept
3 quite different from Sprint/United's current capability to offer a
4 feature. For example, Sprint/United may not have equipped all of its
5 Central Offices with ISDN capability, but that does not mean that it is
6 not technically feasible for Sprint/United to provide ISDN. The
7 interpretation of "technical feasibility" suggested by Mr. Hunsucker is
8 contrary to the FCC's 251 Order, which states as follows.

9
10 Technically feasible. Interconnection, access to unbundled
11 network elements, collocation, and other methods of achieving
12 interconnection or access to unbundled network elements at a
13 point in the network shall be deemed technically feasible absent
14 technical or operational concerns that prevent the fulfillment of
15 a request by a telecommunications carrier for such
16 interconnection, access, or methods. A determination of
17 technical feasibility does not include consideration of economic,
18 accounting, billing, space, or site concerns, except that space
19 and site concerns may be considered in circumstances where
20 there is no possibility of expanding the space available. The
21 fact that an incumbent LEC must modify its facilities or
22 equipment to respond to such request does not determine
23 whether satisfying such request is technically feasible. An
24 incumbent LEC that claims that it cannot satisfy such request
25 because of adverse network reliability impacts must prove to

1 the state commission by clear and convincing evidence that
2 such interconnection, access, or methods would result in
3 specific and significant adverse network reliability impacts.
4 (Part 51.5 of the FCC's Rules, "Terms and definitions."
5 (Emphasis added.) This portion of the FCC's rules are not
6 subject to the stay.)

7
8 Because of the blurring of the two concepts in Mr. Hunsucker's
9 testimony, I cannot agree with his discussion at page 24, lines 13
10 through 21 because his use of the phrase "where technically feasible"
11 appears to refer to Sprint/United's current capability to provide a
12 requested feature or function. As the passage in the FCC's Rules
13 states, if it is possible for Sprint/United to modify its network to
14 provide the requested capability, then it is "technically feasible." The
15 Commission should hold Sprint/United to the required standard for
16 demonstration of technical feasibility, and not accept the looser
17 standard urged by Mr. Hunsucker.

18
19 Q. WHAT COMMENTS DO YOU HAVE REGARDING MR. HUNSUCKER'S
20 TESTIMONY AT THE BOTTOM OF PAGE 24 AND THE TOP OF PAGE
21 25 REGARDING INTERACTION BETWEEN SPRINT/UNITED'S
22 EMPLOYEES AND MCI CUSTOMERS?

23 A. MCI agrees with Sprint/United' position. Of course, as with all such
24 issues, the "devil is in the details" and mutually agreeable contract
25 language must be drafted.

1 **Local Dialing Parity**

2 Q. AT PAGE 41 OF HIS TESTIMONY, MR. HUNSUCKER STATES THAT
3 SPRINT AGREES TO PROVIDE DIALING PARITY. DOES MCI HAVE
4 ANY QUARREL WITH SPRINT/UNITED'S POSITION ON THIS ISSUE?

5 A. No. It is my understanding that Sprint/United is migrating a few
6 remaining central offices away from 6-1-1 dialing to reach the
7 Sprint/United repair center. In place of 6-1-1, Sprint/United will utilize
8 1-800 (or 1-888) toll free numbers. Such an arrangement is
9 acceptable to MCI as it will permit MCI to offer a dialing arrangement
10 to its customers for access to repair that is at parity with what
11 Sprint/United offers.

12

13 **Numbering Resources**

14 Q. MR. HUNSUCKER STATES THAT SPRINT/UNITED IS NOT THE
15 CENTRAL OFFICE CODE ADMINISTRATOR AND THUS DOES NOT
16 MAKE CENTRAL OFFICE CODES AVAILABLE TO LOCAL SERVICE
17 PROVIDERS WITHIN FLORIDA. IN LIGHT OF THIS, DOES MCI
18 REQUIRE ARBITRATION ON THE ISSUE OF CENTRAL OFFICE CODE
19 ASSIGNMENTS IN THIS PROCEEDING?

20 A. No, MCI agrees that this issue does not affect Sprint/United for the
21 reason stated by Mr. Hunsucker.

22

23 **Interim Number Portability Issues**

24 Q. AT PAGES 28-29 OF HIS TESTIMONY, MR. HUNSUCKER STATES
25 THAT THE ISSUE OF RECOVERY OF COSTS OF INTERIM NUMBER

1 PORTABILITY MEASURES SHOULD NOT BE SUBJECT TO
2 ARBITRATION. DO YOU AGREE?

3 A. I strongly disagree. Since May 13, 1996 when the interim agreement
4 was signed, the FCC issued its LNP Order (cited in my direct
5 testimony filed August 22, 1996). As I noted in my direct testimony,
6 the LNP Order -- which for the record is *not* affected by the Eighth
7 Circuit Court's Stay Order -- provides that cost recovery mechanisms
8 for interim number portability measures should not afford one service
9 provider an appreciable incremental cost advantage over another
10 service provider. The only thing in this regard MCI is seeking in this
11 proceeding is to obtain an agreement in which the monthly recurring
12 rate for interim number portability measures is in compliance with the
13 FCC's order. As I noted in my direct testimony, the simplest
14 approach is to simply require all carriers to absorb their own costs of
15 implementing interim number portability measures, given the relatively
16 short time frame during which such measures will be used.

17 MCI recognizes that the Commission has established a
18 proceeding to deal with this issue. Because this issue is unresolved
19 between MCI and Sprint/United however, it should be resolved in this
20 proceeding.

21

22 Q. BECAUSE OTHER ENTITIES ARE NOT PARTIES TO THIS
23 PROCEEDING, WOULD A COMMISSION RESOLUTION OF THE ISSUE
24 IN THIS PROCEEDING POSSIBLY DISCRIMINATE AGAINST OTHERS
25 WHO OBTAIN ILNP MEASURES?

1 A. No. Other entities purchasing interim number portability measures
2 from Sprint/United should be able to modify their agreements to take
3 advantage of the compensation mechanism adopted by the
4 Commission in this proceeding, pursuant to language in those
5 agreements and if they choose to do so. The ability of affected
6 entities to modify their agreements removes the possibility that such
7 entities would suffer competitive harm if the issue is resolved in this
8 proceeding as requested by MCI.

9

10 **Rights-of-Way**

11 Q. WHAT ARE YOUR COMMENTS REGARDING MR. HUNSUCKER'S
12 TESTIMONY AT PAGES 38-39 REGARDING RIGHTS-OF-WAY,
13 CONDUITS, AND POLE ATTACHMENTS?

14 A. My only comment is in regards to Mr. Hunsucker's assertion at 39,
15 lines 8 through 17 regarding the circumstances under which
16 Sprint/United should be permitted to charge the MCI for facility
17 upgrades. Sprint/United's position on this matter is contrary to the
18 Act and not supportable as a matter of sound public policy.

19 The FCC's rules on this point, which are not subject to the
20 Eighth Circuit Court's Stay Order, are very clear. At §1.1416(b), the
21 rules state in pertinent part that:

22 The costs of modifying a facility shall be borne by
23 all parties that obtain access to the facility as a
24 result of the modification and by all parties that
25 directly benefit from the modification. Each party

1 described in the preceding sentence shall share
2 proportionately in the cost of the modification. A
3 party with a preexisting attachment to the
4 modified facility shall be deemed to directly benefit
5 from a modification if, after receiving notification
6 of such modification as provided in subpart J of
7 this part, it adds to or modifies its attachment.
8 Notwithstanding the foregoing, a party with a
9 preexisting attachment to a pole, conduit, duct or
10 right-of-way shall not be required to bear any of
11 the costs of rearranging or replacing its attachment
12 if such rearrangement or replacement is
13 *necessitated solely as a result of an additional*
14 *attachment or the modification of an existing*
15 *attachment sought by another party. (emphasis*
16 *added)*

17 The primary focus of the language of Sect. 224 of the Act was on
18 ensuring that all telecommunications and video services providers
19 have nondiscriminatory access to incumbent LECs' rights-of-way,
20 poles, ducts, and conduits in order to encourage competition in the
21 provision of such services. Thus, the Sprint/United position would
22 grant it a preferred status with regard to use of such assets and is
23 inconsistent with the overall public policy objective of encouraging
24 competition. Furthermore, Mr. Hunsucker's position ignores the fact
25 that, until such time as Sprint/United determines that a facilities

1 expansion is required, it will have been receiving rents from all other
2 entities using the facility(ies). Sprint/United should not be permitted
3 to charge entities with pre-existing attachment for later upgrade of the
4 facilities unless, as set forth in the FCC's rules, the entities have
5 opted to "add to or modify" their attachment(s). If Mr. Hunsucker's
6 recommendation is approved by the Commission, a competitive
7 advantage to Sprint/United would result by allowing it to shift to its
8 competitors costs of an expansion only it requires.

9

10 Q. DO YOU HAVE A RESPONSE TO MR. HUNSUCKER'S DISCUSSION
11 OF MCI'S NEED FOR ACCESS TO SPRINT/UNITED'S ENGINEERING
12 RECORDS?

13 A. Yes. It appears that there is some confusion as to what MCI is
14 seeking. I cannot envision why MCI would require access to
15 Sprint/United's engineering records when unbundled network
16 elements are at issue. Rather, the need for access to such records
17 would arise as a result of MCI's seeking to obtain access to
18 Sprint/United's poles, conduit, ducts, and/or rights-or-way. MCI
19 would renew its request that Sprint/United be required to furnish
20 access to engineering diagrams and records, as set forth in MCI's
21 proposed contract.

22 In those instances, MCI recognizes that proprietary information
23 can sometimes be included in the company's engineering records or
24 drawings. It is my understanding that MCI's needs can frequently be
25 met without requiring access to records or drawing containing

1 proprietary information, although in some instances that will not be
2 the case. MCI recognizes Sprint/United's right to protect its
3 proprietary information, and MCI is willing to negotiate an appropriate
4 nondisclosure agreement to cover circumstances when MCI personnel
5 would require access to proprietary information to determine location
6 and availability of rights-of-way, conduits, and poles.

7

8 **Bona Fide Request Process**

9 Q. DO YOU HAVE COMMENTS REGARDING MR. HUNSUCKER'S
10 PROPOSED "BONA FIDE REQUEST" PROCESS?

11 A. Yes. I have two concerns with Mr. Hunsucker's discussion on this
12 point. First, as I noted above with regard to his recommendation on
13 branding of operator services and directory assistance, Mr. Hunsucker
14 has blurred the distinction between technical feasibility and
15 Sprint/United's current capability. Unless the appropriate definition of
16 technical feasibility is required by the Commission, Sprint/United will
17 be able to use its proposed bona fide request process for
18 anticompetitive purposes.

19 Second, the timetable set forth in Mr. Hunsucker's Exhibit
20 MRH-5 is too lengthy and would frustrate the ability of CLECs such as
21 MCI to offer new services and/or features to our customers in a timely
22 manner. Examination of Mr. Hunsucker's proposal reveals that
23 Sprint/United will have five full months after a request for a new
24 unbundled element is received before it must provide information
25 necessary for the CLEC to move forward. That means that such

1 issues as where the requested network element is available, what
2 rate(s) Sprint/United proposes, and its proposed installation intervals,
3 will not be known to the CLEC for a number of months after it
4 initiates its request. Although there may be certain instances where
5 such a time frame is necessary, that should be the exception rather
6 than the rule. Thus, I would respectfully reurge the timetable set
7 forth in my direct testimony for resolution of bona fide requests.

8

9 Q. DO YOU AGREE WITH MR. HUNSUCKER THAT A "BFR" PROCESS IS
10 APPROPRIATE FOR BRANDING OF OPERATOR SERVICES AND
11 DIRECTORY ASSISTANCE?

12 A. No. MCI is presenting in this proceeding sufficient facts upon which
13 the Commission can render a decision on the question of technical
14 feasibility. Such a decision would place the appropriate obligation on
15 Sprint/United to brand operator services and directory assistance for
16 MCI. If in a particular location, Sprint/United is unable to provide such
17 branding to MCI, it could render that objection at the time a request is
18 made by MCI for that location, and the Commission could, if
19 necessary, deal with that on an exception basis.

20

21 **Directories**

22 Q. DO YOU AGREE WITH MR. HUNSUCKER'S POSITION REGARDING
23 MCI'S ABILITY TO CUSTOMIZE THE DIRECTORIES IT FURNISHES TO
24 ITS CUSTOMERS WITH AN MCI COVER?

25 A. No. Because Sprint/United is affiliated with the publisher(s) of its

1 directories, it is in a unique position to use that business arrangement
2 to deny equivalent treatment in the provision of directories by MCI to
3 its customers. The Commission should ensure that Sprint/United not
4 be permitted to abuse its unique position in an anticompetitive
5 manner, by ordering that Sprint/United cannot provide customer
6 listings to its publishers unless those entities agree to permit MCI to
7 customize the covers it puts on directories intended for its customers.
8 At a minimum, the Commission should require that Sprint/United be
9 neutral as to any business arrangements between its affiliated
10 directory publishers and MCI.

11

12 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

13 A. Yes, at this time.

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