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BY HAND DELIVERY

Blanca Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Complaint of MCImetro -- Docket No. 991755-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access
Transmission Services, LLC and MCI WORLDCOM Communications, Inc.
are the original and fifteen copies of the direct testimony of
Mr. Mark Argenbright.

By copies of this letter, this testimony has been furnished
to the parties on the attached service list.

Very truly yours,

Richard D. Melson

- APP _____
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I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U.S. Mail or Hand Delivery (*) this 16th day of June, 2000:

Tim Vaccaro (*)
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Nancy B. White (*)
Michael P. Goggin
c/o Nancy Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301-1556



Attorney

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY OF MARK ARGENBRIGHT**

3 **ON BEHALF OF**

4 **MCImetro ACCESS TRANSMISSION SERVICES, LLC**

5 **AND MCI WORLDCOM COMMUNICATIONS, INC.**

6 **DOCKET NO. 991755-TP**

7 **JUNE 16, 2000**

8

9 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

10 A. My name is Mark E. Argenbright. My business address is Six Concourse
11 Parkway, Suite 3200, Atlanta, Georgia 30328.

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

13 A. I am employed by WorldCom, Inc. in the Law and Public Policy group and hold
14 the position of Sr. Staff Specialist, State Regulatory Policy. In my current
15 position I assist in the development and coordination of WorldCom's regulatory
16 and public policy initiatives for the company's domestic operations. These
17 responsibilities require that I work closely with our state regulatory groups across
18 the various states, including Florida.

19 **Q. PLEASE DESCRIBE YOUR TELECOMMUNICATIONS BACKGROUND**
20 **AND EDUCATION.**

21 A. My previous position within WorldCom was Senior Manager, Regulatory
22 Analysis, in which I was responsible for performing regulatory analysis in support
23 of a wide range of the company's activities. Prior to that, I was employed by the

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1 Anchorage Telephone Utility (now known as Alaska Communications Systems)
2 as a Senior Regulatory Analyst and American Network, Inc. as a Tariff
3 Specialist. I have worked in the telecommunications industry for sixteen years,
4 with the majority of my positions in the area of regulatory affairs. I received a
5 Bachelor of Science Degree in Business Administration from the University of
6 Montana in 1980.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of my testimony is to explain why MCImetro Access Transmisson
9 Services, LLC ("MCIIm") and MCI WORLDCOM Communications, Inc.
10 ("MWC") are entitled to have their interconnection agreements amended to reflect
11 the rules embodied in the reinstated FCC Rule 51.711, and to receive credits for
12 amounts to which they are entitled under the rule.

13 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

14 A. First I will provide some background to the parties' dispute. Then I will address
15 each of the four issues that have been identified in this docket.

16 **Q. WHAT IS THE NATURE OF THIS DISPUTE?**

17 A. This dispute concerns certain reciprocal compensation language that the Florida
18 Public Service Commission (the "Commission") ordered in the MCI-BellSouth
19 arbitration during the time that the FCC's pricing rules were stayed. This
20 language requires that MCIIm and MWC be compensated for call termination
21 based solely on the end office interconnection rate, even when their switches
22 serve geographic areas comparable to the areas served by BellSouth tandem
23 switches. MCIIm and MWC are requesting that their contracts be changed based

1 on the reinstated FCC pricing rules that entitle them to be paid both the tandem
2 interconnection rate and the end office interconnection rate when their switches
3 serve an area comparable to that served by BellSouth tandem switches. They also
4 are seeking a credit for amounts to which they are entitled under the reinstated
5 rules.

6 **Q. PLEASE EXPLAIN THE TERMS “TRANSPORT AND TERMINATION,”**
7 **“END OFFICE INTERCONNECTION RATE” AND “TANDEM**
8 **INTERCONNECTION RATE.”**

9 A. In its First Report and Order (“Local Competition Order”), the FCC used the term
10 “transport and termination” to refer to the service of transporting and switching
11 traffic from an interconnection point between two carriers’ networks to a
12 customer’s premises. (Local Competition Order, ¶¶ 1039-40.) The FCC defined
13 “transport” for reciprocal compensation purposes to mean “the transmission of
14 terminating traffic . . . from the interconnection point between the two carriers to
15 the terminating carrier’s end office switch that directly serves the called party (or
16 equivalent facility provided by a non-incumbent carrier).” Local Competition
17 Order, ¶ 1039. “Termination” was defined for reciprocal compensation purposes
18 as “the switching of traffic . . . at the terminating carrier’s end office switch (or
19 equivalent facility) and delivery of that traffic from that switch to the called
20 party’s premises.” Local Competition Order, ¶ 1040. The carrier providing the
21 transport and termination service is entitled to receive reciprocal compensation
22 from the carrier that originated the call.

23

1 "End office interconnection rate" is the term the Commission has used to describe
2 the basic reciprocal compensation rate that applies when no tandem switching is
3 involved in the completion of a call. "Tandem interconnection rate" is the term
4 the Commission has used to describe the additional rate to be charged to the
5 originating carrier when a tandem switch is used in the completion of a call.

6

7 **Q. WHAT DOES THE RECIPROCAL COMPENSATION LANGUAGE IN**
8 **QUESTION IN THE PARTIES' INTERCONNECTION AGREEMENTS**
9 **PROVIDE?**

10 **A.** Attachment IV of the agreements provide as follows:

11 2.4 MCIIm may designate an IP [interconnection point] at any
12 Technically Feasible point including but not limited to any
13 electronic or manual cross-connect points, collocations, telco
14 closets, entrance facilities, and mid-span meets where mutually
15 agreed upon. The transport and termination charges for local
16 traffic flowing through an IP shall be as follows:

17

18 2.4.1 When calls from MCIIm are terminating on BellSouth's
19 network through the BellSouth tandem, MCIIm will pay to
20 BellSouth the tandem switching rate.

21

22 2.4.2 When BellSouth terminates calls to MCIIm's subscribers
23 using MCIIm's switch, BellSouth shall pay to MCIIm the

1 appropriate interconnection rate(s). BellSouth shall not
2 compensate MCIIm for transport and tandem switching unless
3 MCIIm actually performs each function.
4

5 2.4.3 MCIIm may choose to establish direct trunking to any given
6 end office. If MCIIm leases trunks from BellSouth, it shall pay
7 charges for dedicated or common transport. For calls terminating
8 from MCIIm to subscribers served by these directly trunked end
9 offices, MCIIm shall also pay BellSouth the end office switching
10 rate. For BellSouth traffic terminating to MCIIm over the direct
11 end office trunking, BellSouth shall pay the same rate.

12 **Q. HOW WAS THIS LANGUAGE INCORPORATED INTO THE MCIIm**
13 **INTERCONNECTION AGREEMENT?**

14 A. The Commission ordered this language in its Order No. PSC-97-0309-FOF-TP,
15 dated March 21, 1997 in the MCI-BellSouth arbitration case. In rejecting MCI's
16 position that it was entitled to the tandem interconnection rate for local traffic
17 terminated on its network, the Commission expressly noted that the FCC rules
18 forming the basis of MCI's rationale were then stayed.

19 **Q. HOW DID THIS RECIPROCAL COMPENSATION LANGUAGE**
20 **BECOME PART OF THE MWC INTERCONNECTION AGREEMENT?**

21 A. This language became part of the MWC interconnection agreement when MWC
22 gave notice to the Commission by letter dated June 28, 1999 of its adoption of the
23 MCIIm interconnection agreement (except for Attachment VIII) pursuant to

1 Section 252(i) of the Telecommunications Act of 1996 (the "Act"). Pursuant to
2 an agreement between MWC and BellSouth filed with the June 28 letter, MWC
3 and BellSouth incorporated all sections of the MCIIm interconnection agreement,
4 as amended, except for Attachment VIII. The effective date of the MWC
5 interconnection agreement is December 1, 1998. The Commission approved the
6 MWC interconnection agreement by order dated September 20, 1999.

7 **Q. WHAT PROVISIONS OF THE ACT ARE RELEVANT HERE?**

8 A. Section 251(b)(5) of the Act imposes on each local exchange carrier "[t]he duty to
9 establish reciprocal compensation arrangements for the transport and termination
10 of telecommunications." Section 252(d)(2)(A) of the Act further provides as
11 follows:

12 For the purposes of compliance by an incumbent local
13 exchange carrier with section 251(b)(5), a State commission shall
14 not consider the terms and conditions for reciprocal compensation
15 to be just and reasonable unless --

16 (i) such terms and conditions provide for
17 the mutual and reciprocal recovery by each carrier
18 of costs associated with the transport and
19 termination on each carrier's network facilities of
20 calls that originate on the network facilities of the
21 other carrier; and

22 (ii) such terms and conditions determine
23 such costs on the basis of a reasonable

1 approximation of the additional costs of terminating
2 such calls.

3
4 **Q. HAS THE FCC INTERPRETED THE RECIPROCAL COMPENSATION**
5 **PROVISIONS OF THE ACT WITH REGARD TO THE SYMMETRY**
6 **ISSUE IN THIS CASE?**

7 A. Yes. The FCC addressed the symmetry issue in this case in FCC Rule 51.711(a),
8 which I quote in full later in my testimony. That rule provides, among other
9 things, that ALECs may recover the tandem interconnection rate when an ALEC
10 switch “serves a geographic area comparable to the area served by the incumbent
11 LEC’s tandem switch.”

12 **Q. PLEASE EXPLAIN THE TIMING OF THE STAY OF FCC RULE 51.711**
13 **AND THE OTHER FCC PRICING RULES, AND OF THE LIFTING OF**
14 **THE STAY.**

15 A. By order filed on October 15, 1996, the Eighth Circuit stayed the FCC’s pricing
16 rules, including Rule 51.711. *Iowa Util. Bd. v. Fed. Communications Comm’n*,
17 109 F.3d 418 (8th Cir. 1996). The Eighth Circuit vacated the pricing rules on
18 jurisdictional grounds on July 18, 1997. *Iowa Util. Bd. v. Fed. Communications*
19 *Comm’n*, 120 F.3d 753 (8th Cir. 1997). On January 25, 1999, the United States
20 Supreme Court reversed, holding that the FCC did have jurisdiction to issue its
21 pricing rules. *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366 (1999). On remand,
22 the Eighth Circuit issued an order reinstating the pricing rules, including Rule
23 51.711. *Iowa Util. Bd. v. FCC*, No. 96-3321 (8th Cir. June 10, 1999).

1 **Q. HOW DID THIS DISPUTE ARISE BETWEEN THE PARTIES?**

2 A. After the pricing rules were reinstated, MCIIm requested BellSouth to negotiate an
3 amendment to its interconnection agreement. By letter dated July 8, 1999, MCIIm
4 notified BellSouth that it was requesting BellSouth to negotiate amendments to
5 the interconnection agreement that conformed its reciprocal compensation
6 provisions to FCC Rule 51.711. A copy of this letter is attached to my testimony
7 as Exhibit ___ (MEA-1). BellSouth responded by letter dated July 30, 1999 and
8 refused to negotiate. A copy of this letter is attached as Exhibit ___ (MEA-2).
9 By letter dated August 10, 1999, MCIIm informed BellSouth that it intended to file
10 an enforcement complaint seeking an amendment incorporating the requirements
11 of Rule 51.711 and payment of reciprocal compensation in accordance with those
12 requirements on a retroactive basis. A copy of this letter is attached as Exhibit
13 ___ (MEA-3). BellSouth responded by letter dated November 18, 1999,
14 claiming, despite the clear language of Rule 51.711, that the MCIIm Agreement
15 calls for symmetry in reciprocal compensation. A copy of this letter is attached as
16 Exhibit ___ (MEA-4).

17 **Q. WHAT IS THE BASIS OF MWC'S CLAIM IN THIS CASE?**

18 A. As I have noted, MWC has opted into most parts of the MCIIm-BellSouth
19 interconnection agreement, including all of Attachment IV, which contains the
20 reciprocal compensation language at issue here. Paragraph 3 of MWC's
21 agreement with BellSouth adopting most of the MCIIm interconnection agreement
22 states as follows: "[MWC] and BellSouth shall accept and incorporate any
23 amendments to the Florida BellSouth/MCIIm Interconnection Agreement, which

1 relate to the above attachments and Terms and Conditions, executed as a result of
2 any final judicial, regulatory, or legislative action.” MWC therefore stands in the
3 same position as MCI in this docket.

4
5 Issue 1: Under FCC Rule 51.711, would MCI and MWC be entitled to
6 be compensated at the sum of the tandem interconnection rate and the end
7 office interconnection rate for calls terminated on their switches if those
8 switches serve a geographic area comparable to the area served by
9 BellSouth's tandem switches?

10

11 **Q. PLEASE EXPLAIN HOW RECIPROCAL COMPENSATION RATES FOR**
12 **BELLSOUTH WERE DETERMINED IN FLORIDA.**

13 A. In its Local Competition Order, the FCC determined that states had three options
14 for establishing transport and termination rates: they could adopt rates based on
15 an economic cost study; they could adopt a default rate; or, in some
16 circumstances, they could order a bill and keep arrangement. Local Competition
17 Order, ¶ 1055. During the AT&T and MCI arbitrations, the Florida Public
18 Service Commission elected to use an economic cost study to determine the rates.
19 In Order No. PSC-97-0309-FOF-TP in the MCI arbitration, the Commission
20 ordered an end office interconnection rate of \$.002 per minute of use and a
21 tandem interconnection rate of \$.00125 per minute of use.

1 Q. WHAT PRINCIPLES DID THE FCC ESTABLISH IN THE LOCAL
2 COMPETITION ORDER FOR RECIPROCAL COMPENSATION TO BE
3 PAID TO ALECS?

4 A. After establishing how reciprocal compensation rates would be determined for
5 incumbent local exchange companies (“ILECs”), the FCC turned to the question
6 of what rates should apply to alternative local exchange companies (“ALECs”).
7 The FCC concluded that the ILECs’ reciprocal compensation rates should be
8 adopted as the “presumptive proxy” for the ALECs’ rates – in other words, the
9 rates were required to be the same. Local Competition Order, ¶ 1085. The only
10 exception to this rule arises when an *ALEC* establishes that its transport and
11 termination costs are *higher* than those of the ILEC. Local Competition Order, ¶
12 1089; FCC Rule 51.711(b). The FCC provided a number of reasons for ordering
13 symmetrical treatment, including the following:

- 14 1. Typically the ILEC and ALEC will be providing service in the same
15 geographic area, so their forward-looking costs should be the same in most
16 cases. Local Competition Order, ¶ 1085.
- 17 2. Imposing symmetrical rates would not reduce carriers’ incentives to
18 minimize their internal costs. ALECs would have the correct incentives to
19 minimize their costs because their termination revenues would not vary
20 directly with changes in their costs. At the same time, ILECs would have
21 the incentive to reduce their costs because they could be expected to
22 transport and terminate much more traffic originating on their own
23 networks than on ALECs’ networks. Thus, even assuming ILEC cost

1 reductions immediately were translated into lower transport and
2 termination rates, any reduction in reciprocal compensation revenues
3 would be more than offset by having a more cost-effective network. Local
4 Competition Order, ¶ 1086.

5 3. Symmetrical rates might reduce ILECs' ability to use their bargaining
6 power to negotiate high termination rates for themselves and low
7 termination rates for ALECs. Local Competition Order, ¶ 1087.

8 **Q. WHAT DID THE FCC CONCLUDE CONCERNING SYMMETRY OF**
9 **TANDEM INTERCONNECTION RATES?**

10 A. The FCC stated the following in paragraph 1090 of the Local Competition
11 Order:

12 We find that the "additional costs" incurred by a LEC when
13 transporting and terminating a call that originated on a competing
14 carrier's network are likely to vary depending on whether tandem
15 switching is involved. We, therefore, conclude that states may
16 establish transport and termination rates in the arbitration process
17 that vary according to whether the traffic is routed through a
18 tandem switch or directly to the end-office switch. In such event,
19 states shall also consider whether new technologies (*e.g.*, fiber ring
20 or wireless networks) perform functions similar to those performed
21 by an incumbent LEC's tandem switch and thus, whether some or
22 all calls terminating on the new entrant's network should be priced
23 the same as the sum of transport and termination via the incumbent

1 LEC's tandem switch. *Where the interconnecting carrier's*
2 *switch serves a geographic area comparable to that served by the*
3 *incumbent LEC's tandem switch, the appropriate proxy for the*
4 *interconnecting carrier's additional costs is the LEC tandem*
5 *interconnection rate.*

6 (Emphasis added.)

7 **Q. PLEASE EXPLAIN WHAT THIS LANGUAGE MEANS IN PRACTICAL**
8 **TERMS.**

9 A. The FCC reached three conclusions. First, it is appropriate to establish an
10 additional rate for ILECs when they use a tandem switch in the transport and
11 termination of ALECs' local traffic. Second, states may consider whether some
12 or all calls terminated by an ALEC may be priced at that higher rate if the ALEC
13 uses alternative technologies or architectures to perform functions similar to
14 those performed by the ILEC's tandem switch. Third, the higher rate *must* be
15 applied when the ALEC's switch serves a geographic area comparable to that
16 served by the ILEC's tandem switch.

17 **Q. MUST AN ALEC PROVIDE TANDEM SWITCHING, AS BELLSOUTH**
18 **CONTENDS, TO OBTAIN THE HIGHER TANDEM RATE?**

19 A. Absolutely not. When the ALEC's switch serves an area comparable to the area
20 served by an ILEC tandem switch, the ALEC *automatically* is entitled to receive
21 the tandem interconnection rate in addition to the end office interconnection rate.
22 In other words, the FCC created a "safe harbor" for ALECs that meet the

1 geographic comparability test. When that test is satisfied, no proof of functional
2 comparability is required and the ALEC is entitled to the higher rate.

3 **Q. HOW DOES THE FCC'S CODIFICATION OF THIS PRINCIPLE BEAR**
4 **ON YOUR ANALYSIS?**

5 A. It confirms my analysis. FCC Rule 51.711(a) provides as follows:

6 (a) Rates for transport and termination of local
7 telecommunications traffic shall be symmetrical, except as
8 provided in paragraphs (b) and (c) of this section. [These
9 exceptions do not apply here.]

10 (1) For purposes of this subpart, symmetrical rates are rates that a
11 carrier other than an incumbent LEC assesses upon an incumbent
12 LEC for transport and termination of local telecommunications
13 traffic equal to those that the incumbent LEC assesses upon the
14 other carrier for the same services.

15 (2) In cases where both parties are incumbent LECs, or neither
16 party is an incumbent LEC, a state commission shall establish the
17 symmetrical rates for transport and termination based on the larger
18 carrier's forward-looking costs.

19 ***(3) Where the switch of a carrier other than an incumbent LEC***
20 ***serves a geographic area comparable to the area served by the***
21 ***incumbent LEC's tandem switch, the appropriate rate for the***
22 ***carrier other than an incumbent LEC is the incumbent LEC's***
23 ***tandem interconnection rate.***

1 (Emphasis added.) The FCC could not have been more clear. The geographic
2 comparability rule was adopted without exception or qualification.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

4 A. The first issue must be answered in the affirmative. So long as MCI's and
5 MWC's switches serve a geographic area comparable to the area served by
6 BellSouth's tandem switches, MCI and MWC are entitled to receive the tandem
7 interconnection rate as well as the end office interconnection rate.

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

10 **Q. PLEASE COMPARE THE MCI/MWC LOCAL NETWORK TO**
11 **BELLSOUTH'S LOCAL NETWORK IN GENERAL.**

12 A. MCI and MWC use state-of-the-art equipment and design principles based on
13 technology available today. Their local network has been built within the past
14 few years using optical fiber rings with SONET transmission, which makes it
15 possible to access and serve a large geographic area from a single switch. In
16 addition, MCI and MWC use combinations of DS1 loops and transport leased
17 from BellSouth to extend the reach of their network. In contrast, BellSouth's
18 network, developed over many decades, employs an architecture characterized by
19 a large number of switches within a hierarchical system with relatively short
20 copper based subscriber loops.

1 **Q. WHAT ARE THE GEOGRAPHIC AREAS AT ISSUE IN THIS CASE?**

2 A. There are two geographic areas at issue. The first is the area including Orlando in
3 central Florida. The second is the area including Miami and Ft. Lauderdale in
4 south Florida.

5 **Q. PLEASE DESCRIBE MCIm'S LOCAL NETWORK IN THE ORLANDO**
6 **AREA.**

7 A. MCIm has a single switch serving the Orlando area. That switch provides service
8 to fourteen rate centers, six of which also are served by BellSouth via its tandem
9 and end office architecture. The eight rate centers served by MCIm that are not
10 served by BellSouth are in Sprint's service territory. MCIm's Orlando switch is
11 supported by fifteen OC3 SONET systems, twenty-five OC12 systems and forty
12 OC48 systems. The geographic area served by MCIm's Orlando switch is shown
13 in Exhibit ___ (MEA-5) to my testimony. This area is comparable to the
14 geographic area served by BellSouth tandem switches in the Orlando region.

15 **Q. PLEASE DESCRIBE MCIm'S LOCAL NETWORK IN THE SOUTH**
16 **FLORIDA AREA.**

17 A. MCIm and MWC have three switches in south Florida, two located in Miami and
18 one in Pompano Beach. These switches serve twelve rate centers, all of which are
19 served by BellSouth with its tandem and end office architecture. MCIm's and
20 MWC's south Florida switches are supported by one OC3 SONET system, six
21 OC12 systems and fifty-seven OC48 systems. The geographic area served by the
22 MCIm/MWC network in south Florida is shown in Exhibit ___ (MEA-6) to my

1 testimony. This area is comparable to the geographic area served by BellSouth
2 tandem switches in the south Florida region.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

4 A. Issue 2 should be answered in the affirmative. MCI's and MWC's switches
5 serve geographic areas comparable to those served by BellSouth tandem switches.

6

7 Issue 3: Should BellSouth be required, pursuant to Part A Section 2.2 or
8 2.4 of the interconnection agreement, to execute amendments to its
9 interconnection agreements with MCI and MWC requiring BellSouth to
10 compensate MCI and MWC at the sum of the tandem interconnection
11 rate and the end office interconnection rate for calls terminated on their
12 switches that serve a geographic area comparable to the area served by
13 BellSouth's tandem switches?

14

15 **Q. WHAT IS THE PRINCIPAL CHANGE-OF-LAW PROVISION THAT**
16 **MCI AND MWC ARE RELYING ON TO REQUIRE AN AMENDMENT**
17 **TO THE INTERCONNECTION AGREEMENTS?**

18 A. The principal change-of-law provision that is relevant here is Part A, Section 2.2,
19 which states as follows:

20 In the event the FCC or the State regulatory body promulgates rules or
21 regulations, or issues orders, or a court with appropriate jurisdiction issues
22 orders, which make unlawful any provision of this Agreement, the parties
23 shall negotiate promptly and in good faith in order to amend the

1 Agreement to substitute contract provisions which are consistent with such
2 rules, regulations or orders. In the event the parties cannot agree on an
3 amendment within thirty (30) days from the date any such rules,
4 regulations or orders become effective, then the parties shall resolve their
5 dispute under the applicable procedures set forth in Section 23 (Dispute
6 Resolution Procedures) hereof.

7
8 Although I am not a lawyer, I can observe that the language the Commission
9 ordered in Attachment IV, Sections 2.4, 2.4.1, 2.4.2 and 2.4.3 prohibits MCIIm
10 and MWC from recovering the tandem interconnection rate even when their
11 switches cover a geographic area comparable to the area covered by BellSouth
12 tandem switches. Thus, this reciprocal compensation language does not meet the
13 requirements of the Act as interpreted by the FCC in its Rule 51.711. Under Part
14 A, Section 2.2 of the parties' interconnection agreements, amending these
15 provisions is therefore appropriate.

16 **Q. PLEASE EXPLAIN HOW PART A, SECTION 2.4 MIGHT APPLY**
17 **HERE.**

18 **A.** Part A, Section 2.4, states as follows:

19 In the event that any final and nonappealable legislative, regulatory,
20 judicial or other legal action materially affects any material terms of this
21 Agreement, or the ability of MCIIm or BellSouth to perform any material
22 terms of this Agreement, or in the event a judicial or administrative stay of
23 such action is not sought or granted, MCIIm or BellSouth may, on thirty

1 (30) days written notice (delivered not later than thirty (30) days following
2 the date on which such action has become legally binding and has
3 otherwise become final and nonappealable) require that such terms be
4 renegotiated, and the Parties shall renegotiate in good faith such mutually
5 acceptable new terms as may be required. In the event that such new
6 terms are not renegotiated within ninety (90) days after such notice, the
7 dispute shall be resolved in accordance with Section 23 (Dispute
8 Resolution Procedures) of this Agreement.

9
10 MCIIm's letter to BellSouth requesting negotiation is dated July 8, 1999, and thus
11 was sent within thirty days of the Eighth Circuit's order, but obviously not within
12 thirty days of the Supreme Court's decision. Thus, if the Commission were to
13 determine that the lifting of the stay became final and nonappealable when the
14 Eighth Circuit issued its order, Section 2.4 would apply here, but otherwise it
15 would not. I should note that MCIIm's and MWC's position is that the lifting of
16 the stay became final and nonappealable when the Supreme Court issued its
17 decision. If the Commission agrees, Section 2.4 would not apply. In any event,
18 Section 2.2 applies regardless of whether Section 2.4 is determined to apply.

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

20 A. Issue 3 should be answered in the affirmative. Under Part A, Section 2.2 of the
21 interconnection agreements, MCIIm and MWC are entitled to have their
22 agreements amended because the agreements' reciprocal compensation provisions
23 are contrary to the reinstated FCC Rule 51.711. Further, if Part A, Section 2.4 is

1 deemed applicable, it would provide an independent reason for requiring the
2 agreements to be amended.

3
4 Issue 4: Are MCIIm and MWC entitled to a credit from BellSouth equal to
5 the additional per minute amount of the tandem interconnection rate from
6 January 25, 1999 to the earlier of (i) the date such amendments are
7 approved by the Commission, or (ii) the date the interconnection
8 agreements are terminated?

9
10 **Q. WHAT IS MCIIm'S AND MWC'S POSITION ON THE ISSUE OF**
11 **WHETHER THEY SHOULD RECEIVE CREDITS FOR THE**
12 **ADDITIONAL PER MINUTE AMOUNT OF TANDEM**
13 **INTERCONNECTION CHARGES THAT BELLSOUTH HAS FAILED TO**
14 **PAY SINCE THE SUPREME COURT'S IOWA UTILITIES BOARD**
15 **DECISION?**

16 A. Our position is that we are entitled to such a credit dating back to January 25,
17 1999, when the Supreme Court effected the change of law in question. From that
18 point forward, the reciprocal compensation provisions in the parties'
19 interconnection agreements were at odds with reinstated FCC pricing rules. Issue
20 4 therefore should be answered in the affirmative.

21 **Q. WHAT ARE MCIIm AND MWC ASKING THE COMMISSION TO DO?**

22 A. MCIIm and MWC are requesting the Commission to do the following:

1 (1) Declare that MCIIm and MWC are entitled to be compensated at the sum
2 of the tandem interconnection rate and the end office interconnection rate for
3 calls terminated on their switches that serve a geographic area comparable to the
4 area served by BellSouth's tandem switches.

5 (2) Order BellSouth to provide MCIIm and MWC with credits equal to the
6 additional per minute amount of the tandem interconnection rate for the period
7 from January 25, 1999 to the earlier of (i) the date such amendments are approved
8 by the Commission, or (ii) the date the interconnection agreements are terminated.

9 (3) Order BellSouth to execute amendments to the MCIIm-BellSouth
10 interconnection agreement and the MWC-BellSouth interconnection agreement
11 that would incorporate the requirements of FCC Rule 51.711.

12 **Q. ASSUMING THE COMMISSION ORDERS CREDITS, HOW SHOULD**
13 **THE PARTIES GO ABOUT DETERMINING THE CORRECT AMOUNT?**

14 A. The precise amount can be determined by the parties through their normal billing
15 resolution processes. MCIIm and BellSouth followed this procedure, for example,
16 in the Florida DS1 combination proceeding.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.



MCI Telecommunications Corporation

Two Northwinds Center
2520 Northwinds Parkway
Alpharetta, GA 30004

Exhibit ___ (MEA-1)
Witness: Argenbright
Docket No. 991755-RP

July 8, 1999

Mr. Pat Finlen, Manager – Interconnection Services
BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

Re: Reinstatement of Rule 51.701

Dear Mr. Finlen:

As you know, on June 10, 1999, the Eighth Circuit reinstated several FCC pricing rules that it had previously vacated, including Rule 51.711. That rule requires that “[r]ates for transport and termination of local telecommunications traffic shall be symmetrical,” subject to limited (and here inapplicable) exceptions. Rule 51.711 (a)(1) defines “symmetrical rates” as rates that a carrier such as a CLEC “assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.” Rule 51.711(a)(3) specifically provides:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC’s tandem interconnection rate.

Contrary to reinstated Rule 51.711, the interconnection agreements between MCImetro Access Transmission Services, Inc. (“MCIIm”) and BellSouth Telecommunications, Inc. (“BellSouth”) in Florida and Georgia expressly provide for asymmetrical rates. Those agreements provide that when BellSouth terminates a call through a tandem it may charge the tandem rate, but when MCIIm terminates a call through a switch, it only may charge the switching rate (regardless of the switch’s geographic reach). (Georgia Agreement, Part IV, §§ 2.4, 2.4.1, 2.4.2; Florida Agreement, Part IV, §§ 2.4, 2.4.1, 2.4.2.) Likewise, the interconnection agreements between MCIIm and BellSouth in Alabama, North Carolina, South Carolina, Louisiana and Mississippi do not contain provisions that permit MCIIm to charge the tandem rate when its switches serves a geographic area comparable to the area served by a BellSouth tandem. (The Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina and South Carolina interconnection agreements will be referred to below as the “Agreements”).



Part A, Section 2.2 of each of the Agreements provides that in the event of a change in the law that makes a provision in the Agreement unlawful, "the parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with" the new law. To the extent the Agreements do not permit MCI to charge the tandem rate when its switches cover a geographic area comparable to the area served by a BellSouth tandem, they violate the Telecommunications Act of 1996 and Rule 51.711 and are therefore unlawful.

Pursuant to Part A, Section 2.2 of the Agreements, MCI requests that the Agreements be amended to conform to the requirements of Rule 51.711. Please inform me in writing no later than July 19, 1999, whether BellSouth will proceed with negotiations as required by the Agreements.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan K. Green". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Bryan K. Green
Senior Manager - Carrier Agreements

Cc: Marcel Henry
Michelle Berkovitz
Jerry Hendrix

BellSouth Interconnection Services
34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

July 30, 1999

Mr. Bryan Green
Senior Manager
MCI-WorldCom
2 Northwinds Center
2520 Northwinds Parkway
Alpharetta, GA 30004

Dear Bryan:

This letter is in response to your letter dated, July 8, 1999 regarding the Eighth Circuit Court's reinstatement of the FCC's pricing rules that had previously been vacated, particularly rule §51.711.

MCI's interpretation of the Code of Federal Regulations ("CFR") §51.711 is not correct. Rule 47 C.F.R. §51.711(a)(3) is simply a proxy that may be utilized by a state commission to determine the appropriate rate to be charged to recover the "additional costs" incurred by a new entrant such as MCI to terminate local traffic. When the compensation for termination of local traffic was determined by the state commissions for the purposes of the current Interconnection Agreement, the proxy rule was not utilized by the state commissions and therefore the rule has no effect under the current compensation arrangements. BellSouth assumes that this proxy rule will be an issue for discussion when the Interconnection Agreements are negotiated between MCI metro and BellSouth.

As 47 C.F.R. §51.711(a)(3) is simply a proxy, the effect of the reinstatement of the rule cannot cause the compensation rates contained within the current agreements to be unlawful. Therefore, the language of section 2.2 is not called into play.

If you have any questions, please contact me at (404) 927-8389.

Sincerely,



Pat Finlen
Manager-Interconnection Services

Cc: Michael Willis, Manager-Interconnection Services
Parkey Jordan, Esq.
Jerry Hendrix, Senior Director- Interconnection Services



MCI Telecommunications
Corporation

Two Northwinds Center
2520 Northwinds Parkway
Alpharetta, GA 30004

Exhibit ___ (MEA-3)
Witness: Argenbright
Docket No. 991755-RP

August 10, 1999

Mr. Pat Finlen
BellSouth Interconnection Services
34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

Re: Reinstatement of Rule 51.701

Dear Pat:

I have reviewed your letter of July 30, 1999 in which BellSouth takes the position that it is not required to pay reciprocal compensation at symmetrical rates under our interconnection agreements despite the reinstatement of the FCC's rules requiring such rates. MCI WorldCom emphatically disagrees with BellSouth on this issue.

Your letter asserts that Rule 51.711(a)(3) is a proxy that "may" be used by a state commission in determining reciprocal compensation rates. The plain language of Rule 51.711 provides no support for this reading. To the contrary, Rule 51.711(a) provides unequivocally that "[r]ates for transport and termination of local telecommunications traffic shall be symmetrical," subject to two exceptions that are not applicable here. This rule is mandatory and may not be disregarded by state commissions as you suggest. Rule 51.711(c), which requires tandem rates when a CLEC's switch serves a geographic area comparable to an ILEC's tandem, simply describes one aspect of what it means to provide symmetrical treatment. That rule is not optional and may not be ignored by state commissions or BellSouth.

BellSouth also contends that Rule 51.711 does not apply because it was stayed when state commissions approved our interconnection agreements. But Part A, Section 2.2 of our agreements was intended to address situations like this in which the law changes after approval of the agreements. Your letter simply ignores this provision.

We regret that BellSouth has refused to negotiate language to implement the symmetry requirements of Rule 51.711 despite the clear requirement in our agreements that such negotiations be undertaken. Unfortunately, BellSouth leaves us no choice but to take this issue to the state commissions for resolution. We soon will file enforcement complaints requesting commissions to require amendments to our agreements



incorporating the requirements of Rule 51.711 and payment of reciprocal compensation in accordance with those requirements on a retroactive basis.

Should BellSouth wish to reconsider its position, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Green", with a large, sweeping flourish extending to the left.

Bryan Green
Sr. Manager- Carrier Agreements

Cc: Marcel Henry
Michelle Berkovitz
Jerry Hendrix



BellSouth Telecommunications, Inc.
Room 34S91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

November 18, 1999

Mr. Bryan Green
Senior Manager
MCI-WorldCom
2 Northwinds Center
2520 Northwinds Parkway
Alpharetta, GA 30004

Dear Bryan:

This is in response to your letter dated August 10, 1999 regarding the Eighth Circuit Court's reinstatement of the FCC's pricing rules, particularly rule §51.711, that had previously been vacated.

First, let me say that BellSouth emphatically denies that it has taken the position that it is not required to pay reciprocal compensation symmetrically under the existing MCI/BellSouth Interconnection Agreement. As evidenced in the following paragraphs from Attachment III of the Agreement, it is quite clear that each party will pay symmetrically for the network facilities used to terminate local calls:

- 2.4.1 When calls from MCI are terminating on BellSouth's network through the BellSouth tandem, MCI will pay to BellSouth the local interconnection rates provided in this Agreement for BellSouth's network facilities used in terminating such calls. [Emphasis added]
- 2.4.2 When BellSouth terminates calls to MCI's subscribers using MCI's switch, BellSouth shall pay to MCI the local interconnection rates provided in this Agreement for MCI's network facilities used in terminating such calls. [Emphasis added]

Attachment III further states:

- 2.4.3 MCI may choose to establish direct trunking to any given end office. If MCI leases trunks from BellSouth, it shall pay charges for dedicated or common transport.

- 2.4.3.1 For calls terminating from MCI to subscribers served by these directly trunked end offices, MCI shall also pay BellSouth's local interconnection rates provided in this Agreement for BellSouth's network facilities used in terminating such calls. [Emphasis added]
- 2.4.3.2 For BellSouth traffic terminating to MCI over the direct end office trunking, BellSouth shall pay to MCI the local interconnection rates provided in this Agreement for MCI's network facilities used in terminating such calls. [Emphasis added]

Thus, BellSouth has agreed that the rates for reciprocal compensation should be symmetrical, based on the functions performed by each party. If MCI utilizes a tandem for terminating local calls, BellSouth will pay the applicable tandem switching, transport and end office switching rates contained in our existing agreements. If MCI does not utilize a tandem, compensation for tandem switching and transport is not applicable.

MCI certainly has the right to take this issue to the state Public Service Commissions for resolution. However, the FCC's rules and our Interconnection Agreement favor BellSouth on this issue.

Please call me if you have any questions in this regard. I can be reached at (404) 927-8389.

Sincerely,



Pat Finlen
Manager-Interconnection Services

Cc: Michael Willis, Manager-Interconnection Services
Parkey Jordan, Esq.
Jerry Hendrix, Senior Director- Interconnection Services

