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June 16, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 991755-TP (MCI)

Dear Ms. Bayó:

Enclosed please find an original and fifteen copies of Direct Testimony of Cynthia K. Cox, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield

E. Earl Edenfield (EW)

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

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CERTIFICATE OF SERVICE
Docket No. 991755-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 16th day of June, 2000 to the following:

Tim Vaccaro
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E. Earl Edenfield, Jr. (En)

1 BELLSOUTH TELECOMMUNICATIONS, INC.

2 DIRECT TESTIMONY OF CYNTHIA K. COX

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET NO. 991755-TP

5 JUNE 16, 2000

6

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

10

11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND
16 EXPERIENCE.

17

18 A. I graduated from the University of Cincinnati in 1981 with a Bachelor of Business
19 Administration degree in Finance. I graduated from the Georgia Institute of
20 Technology in 1984 with a Master of Science degree in Quantitative Economics. I
21 immediately joined Southern Bell in the Rates and Tariffs organization with the
22 responsibility for demand analysis. In 1985 my responsibilities expanded to include
23 administration of selected rates and tariffs including preparation of tariff filings. In
24 1989, I accepted an assignment in the North Carolina regulatory office where I was
25 BellSouth's primary liaison with the North Carolina Utilities Commission Staff and

1 the Public Staff. In 1993, I accepted an assignment in the Governmental Affairs
2 department in Washington D.C. While in this office, I worked with national
3 organizations of state and local legislators, NARUC, the FCC and selected House
4 delegations from the BellSouth region. In February 2000, I was appointed Senior
5 Director of State Regulatory.

6
7 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

8
9 A. The purpose of my direct testimony is to respond to the issues addressed in the
10 complaint filed by MCImetro Access Transmission Services, LLC ("MCIIm") and
11 MCI WorldCom Communications, Inc. ("MWC") (jointly "WorldCom") on
12 November 23, 1999 with the Florida Public Service Commission ("Commission").
13 Specifically, I will respond to WorldCom's allegations that BellSouth has breached
14 its agreement with WorldCom by refusing to negotiate an amendment that
15 WorldCom believes is necessary based on WorldCom's interpretation of the
16 requirements of FCC Rule 51.711. In this regard, WorldCom is seeking to amend
17 its Interconnection Agreement so that it can charge BellSouth tandem
18 interconnection rates based solely on the claim that WorldCom's switches serve a
19 geographic area comparable to the area served by BellSouth's tandem switches,
20 irrespective of whether WorldCom's switch performs local tandem switching
21 functions.

22
23 ***Issue 1: Under FCC Rule 51.711, would MCIIm and MWC be entitled to be compensated***
24 ***at the sum of the tandem interconnection rate and the end office interconnection rate for***

25

1 *calls terminated on their switches if those switches serve a geographic area comparable*
2 *to the area served by BellSouth's tandem switches?*

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. In its Order No. PSC-96-1579-FOF-TP, dated December 31, 1996, the Commission
7 established reciprocal compensation rates for end office switching and tandem
8 switching. In that same order, the Commission determined rates for common
9 transport. BellSouth's position is that under the FCC's Rule 51.711 and this
10 Commission's prior Orders, as well as the plain language in the current
11 BellSouth/WorldCom Interconnection Agreement, WorldCom should be
12 compensated only for those functions WorldCom actually performs. If a switch is
13 not used to provide a tandem function during a specific call, it is not appropriate to
14 pay reciprocal compensation for the tandem switching function. In short,
15 WorldCom should only be compensated for the functions that it provides.

16

17 Contrary to the plain language of FCC Rule 51.711, prior Orders of the
18 Commission and the BellSouth/WorldCom Interconnection Agreement, WorldCom
19 proposes that the end office interconnection rate plus the tandem interconnection
20 rate be applied to local calls in every instance, regardless of which elements are
21 actually used to terminate and transport the local traffic.

22

23 Q. UNDER RULE 51.711, IS WORLDCOM ENTITLED TO CHARGE
24 BELLSOUTH THE TANDEM INTERCONNECTION RATE SOLELY BASED
25 ON THE GEOGRAPHIC AREA SERVED BY WORLDCOM'S SWITCHES?

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A. No. Section 51.711 of the FCC’s rules is titled “Symmetrical reciprocal compensation”, and specifically sets forth the requirement that “rates for transport and termination of local telecommunications traffic shall be symmetrical” (§51.711(a)). Subpart (1) of this same section provides that, “symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local traffic equal to those that the incumbent LEC assess upon the other carrier for the same services.” (§51.711(a)(1)) (emphasis added). While WorldCom downplays this part of the rule, 51.711(a)(1) fully comports with the FCC’s discussion of Rule 51.711 setting forth a two-prong test that must be satisfied prior to an alternative local exchange carrier (“ALEC”) being entitled to reciprocal compensation at the incumbent local exchange carrier’s (“ILEC’s”) tandem interconnection rate. In paragraph 1090 of the FCC’s *First Report and Order*, (CC Docket 96-98), issued August 6, 1996, the FCC noted:

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

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

5
6 In short, the FCC identified two requirements that WorldCom, or any ALEC, must
7 satisfy in order to be compensated at the tandem interconnection rate: (1)
8 WorldCom's switch must perform functions similar to those performed by
9 BellSouth's tandem switch; and (2) WorldCom's switch must serve a geographic
10 area comparable to the geographic area served by BellSouth. Clearly, the burden of
11 proof is on WorldCom to prove that it satisfies both requirements of the FCC's test.

12
13 Q. HAS THE COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

14
15 A. Yes. All of the Commission's prior decisions on this issue are consistent with the
16 FCC's two-prong test. Indeed, as WorldCom is well aware, one of these decisions
17 involved MCI. In that case the Commission held: "We find that the Act does not
18 intend for carriers such as MCI to be compensated for a function they do not
19 perform. Even though MCI argues that its network performs 'equivalent
20 functionalities' as Sprint in terminating a call, MCI has not proven that it actually
21 deploys both tandem and end office switches in its network. If these functions are
22 not actually performed, then there cannot be a cost and a charge associated with
23 them. Upon consideration, we therefore conclude that MCI is not entitled to
24 compensation for transport and tandem switching unless it actually performs each
25 function." Order No. PSC-97-0297-FOF-TP, Docket 962120-TP, at 10-11 (March

1 14, 1997). See also Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, at 4
2 (Dec. 16, 1996) (“The evidence in the record does not support MFS’ position that
3 its switch provides the transport element; and the Act does not contemplate that the
4 compensation for transporting and terminating local traffic should be symmetrical
5 when one party does not actually use the network facility for which it seeks
6 compensation”).

7
8 More recently, the Commission considered the Rule 51.711 two-prong test in the
9 ICG Arbitration proceeding to conclude, “While FCC Rule 47 C.F.R. Section
10 51.711 allows us to provide for reciprocal compensation at the tandem rate if the
11 switch of a carrier other than an incumbent LEC serves a geographic area
12 comparable to that served by the incumbent LEC’s tandem switch, the evidence of
13 record does not provide an adequate basis to determine that ICG’s network will
14 fulfill this geographic criterion. Similarly, the evidence of record in this arbitration
15 does not show that ICG will deploy both a tandem and end office switch in its
16 network. In addition, since tandem switching is described by both parties as
17 performing the function of transferring telecommunications between two trunks as
18 an intermediate switch or connection, we do not believe this function will or can be
19 performed by ICG’s single switch.” Order No. PSC-00-0128-FOF-TP, Docket No.
20 990691-TP at 10 (January 14, 2000).

21
22 It is clear from the Commission’s prior decisions that WorldCom must satisfy both
23 requirements of the FCC’s rule in order to receive compensation for the tandem
24 switching function. WorldCom fails to show that it satisfies the geographic area
25 prong of the test and does not even allege in the Complaint that it meets the

1 functionality prong.

2

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

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. Preliminarily, BellSouth notes again that this issue only addresses one prong of a
9 two-prong test that must be satisfied in order for WorldCom to receive reciprocal
10 compensation based on a tandem switching rate. Moving beyond that, BellSouth
11 notes that according to the FCC's Rule 51.711(a)(3), to establish that WorldCom's
12 switch serves a geographic area comparable to that served by the ILEC's tandem
13 switches, WorldCom must show the particular geographic area its switch actually
14 serves, not the geographic area that its switch may be capable of serving. In order
15 to make a showing that WorldCom's switch actually serves a geographic area equal
16 to or greater than that served by BellSouth's tandem, WorldCom must provide
17 information as to the location of its customers or, at the very least, give some
18 indication as to how its customers are actually being served by WorldCom's switch.
19 This is, of course, exactly what a United States District Court told MCI in Illinois,
20 when MCI evidently tried to get by without proving the actual geographic coverage
21 of MCI's switches. In that case, the U.S. District Court specifically determined that
22 the test required by the FCC's rule is a functionality/geography test. In its Order,
23 the Court stated:

24

25

In deciding whether MCI was entitled to the tandem interconnection rate,

1 the ICC applied a test promulgated by the FCC to determine whether MCI's
2 single switch in Bensonville, Illinois, performed functions similar to, and
3 served a geographical area comparable with, an Ameritech tandem switch.⁹
4 (emphasis added)

5
6 ⁹MCI contends the Supreme Court's decision in IUB affects resolution of
7 the tandem interconnection rate dispute. It does not. IUB upheld the FCC's
8 pricing regulations, including the 'functionality/geography' test. 119 S. Ct.
9 at 733. MCI admits that the ICC used this test. (Pl. Br. At 24.) Nevertheless,
10 in its supplemental brief, MCI recharacterizes its attack on the ICC decision,
11 contending the ICC applied the wrong test. (Pl. Supp. Br. At 7-8.) But
12 there is no real dispute that the ICC applied the functionality/geography test;
13 the dispute centers around whether the ICC reached the proper conclusion
14 under that test. (emphasis added) (*MCI Telecommunications Corp. v.*
15 *Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22,*
16 *1999)*).

17
18 Indeed, the Ninth Circuit Court of Appeals viewed the rule in the same way, finding
19 that:

20
21 [t]he Commission properly considered whether MFS's switch performs
22 similar functions and serves a geographic area comparable to US West's
23 tandem switch." (*U.S. West Communications v. MFS Intelenet, Inc, et. al,*
24 *193 F. 3d 1112, 1124*)

1 In the case at hand, WorldCom has not offered any proof that its switch currently
2 serves areas comparable to BellSouth's tandem. WorldCom has not provided the
3 Commission with the location of WorldCom's customers in Florida, information
4 that would be essential for the Commission to determine whether WorldCom's
5 switches actually serve areas comparable to BellSouth's tandem switches. Absent
6 such evidence, WorldCom has clearly failed to satisfy its burden of proof on this
7 issue. Accordingly, even if WorldCom could show that its interpretation of Rule
8 51.711 were correct, and it cannot, WorldCom's failure to provide evidence on this
9 issue is sufficient grounds for the Commission to dismiss this complaint.

10

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

17

18 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

19

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

1 current agreement that are made "unlawful" by the reinstatement of the FCC Rule
2 51.711. In fact, the Commission has considered this issue after reinstatement of
3 Rule 51.711 and reached conclusions consistent with the Commission's prior
4 Orders.

5

6 Q. DOES THE REINSTATEMENT OF FCC RULE 51.711 IMPACT THE
7 RECIPROCAL COMPENSATION PROVISIONS IN THE CURRENT
8 WORLDCOM/BST INTERCONNECTION AGREEMENT?

9

10 A. No, because the Interconnection Agreement is already consistent with the FCC's
11 Rule 51.711 and the Commission's prior Orders. Section 2.4.2 in Part IV of the
12 current Interconnection Agreement clearly provides that BellSouth will compensate
13 WorldCom at the appropriate symmetrical interconnection rate(s) for each function
14 WorldCom actually performs in terminating local traffic from BellSouth. This
15 provision comports with FCC Rule 51.711(a) (1), which addresses symmetrical
16 rates as being equivalent rates that two carriers assess upon each other for providing
17 the same services for the transport and termination of local telecommunications
18 traffic received from the other carrier. In order to be compliant with Rule 51.711,
19 with prior Commission Orders, and with the provisions of the current
20 Interconnection Agreement, it is appropriate for WorldCom to charge BellSouth the
21 tandem interconnection rate only when WorldCom performs the tandem switching
22 function to terminate BellSouth originated local traffic. The same approach holds
23 true when BellSouth performs the tandem switching function to terminate local
24 traffic from WorldCom; BellSouth would charge WorldCom the tandem
25 interconnection rate.

1

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

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. BellSouth has appropriately paid WorldCom for terminating BellSouth's local
10 traffic. This payment has been made consistent with FCC Rule 51.711, prior
11 Commission Orders and the current Interconnection Agreement. In no situation is it
12 appropriate for this Commission to require BellSouth to pay or credit monies to
13 WorldCom for transport and termination functions when those functions are not
14 provided, regardless of the geographic area WorldCom's switch may serve.
15 Furthermore, there are no provisions in the current Interconnection Agreement that
16 would place such obligation upon BellSouth.

17

18 However, should the Commission determine that WorldCom's switch performs the
19 tandem switching function and serves a geographic area comparable to BellSouth's
20 tandem switches, any obligation to pay WorldCom the tandem switching rate
21 should be prospective only. Nothing in Part A, Sections 2.2 and 2.4 require
22 amendments under these sections to be applied retroactively. To the contrary, these
23 sections anticipate that the parties will negotiate new language consistent with any
24 change in the law and, if unsuccessful, will submit to dispute resolution under the
25 terms of the agreement.

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If the Commission, however, determines that retroactive payments are appropriate, those payments should not be retroactive to January 25, 1999. As WorldCom noted in its correspondence to BellSouth on July 8, 1999, the Eighth Circuit Court of Appeals did not reinstate Rule 51.711 until June 10, 1999. Under any circumstances, it is clear that WorldCom did not request amendment negotiations until July 8, 1999. If the Commission deems that the Interconnection Agreement requires retroactive payments, those payments should only be retroactive to the date WorldCom requested that the agreement be amended.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(#215931v2)