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ORIGINAL

October 4, 2000

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Re: Docket No. 991755-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI metro Access
Transmission Services, LLP and MCI WorldCom Communications, Inc.
(collectively "WorldCom") are the original and fifteen copies of
their Post-Hearing Brief.

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

Very truly yours,

Richard D. Melson

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: 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

Filed: October 4, 2000

WORLDCOM'S POST-HEARING BRIEF

MCImetro Access Transmission Services, LLC ("MCI") and MCI WORLDCOM Communications, Inc. ("MWC") (collectively, "WorldCom") hereby file their post-hearing brief.

Executive Summary

Under the Federal Communications Commission's (FCC's) Rule 51.711 (the "reciprocal compensation rule"), which was upheld by the Supreme Court in January 1999 and formally reinstated by the 8th Circuit Court of Appeals in June, 1999, an ALEC that terminates local traffic for an ILEC is entitled to receive compensation at the ILEC's tandem interconnection rate if it meets either of the following tests:

- (1) the ALEC's switch terminates traffic to a geographic area comparable to the area served by the ILEC's tandem switches (the "geographic test"); or
- (2) the ALEC's switching network provides a service comparable to the service performed by the ILEC's tandem switching network (the "functionality test").

In this proceeding, the Commission must determine how Rule 51.711 applies to WorldCom and BellSouth in the particular circumstances of this case. This determination requires the Commission to consider (a) the correct interpretation of the FCC's reciprocal compensation

rule, (b) the effect of the change-of-law provisions in the Commission-approved Interconnection Agreements between WorldCom and BellSouth, and (c) the evidence in this record regarding the geographic coverage and functionality of WorldCom's switching network in Florida.

The proper interpretation of Rule 51.711 is that the rule establishes an *either-or* test for determining when an ALEC is entitled to receive reciprocal compensation at the ILEC's tandem interconnection rate. WorldCom is therefore entitled to receive compensation at the tandem rate so long as its local switches provide service to geographic areas that are comparable to those served by BellSouth's local tandem switches. Even if the Commission were to (improperly) interpret the rule as establishing a *two-prong* test, the second prong which requires comparable functionality would be satisfied so long as WorldCom's network performs a traffic aggregation and distribution function similar to that performed by BellSouth's tandem network. The second prong would be met even if WorldCom uses new technology, rather than a tandem switching hierarchy, to perform the traffic aggregation and distribution function.

The provisions of the existing Interconnection Agreement between WorldCom and BellSouth do not permit WorldCom to receive reciprocal compensation at the tandem interconnection rate unless it deploys a traditional trunk-to-trunk tandem switch. At the time the Commission directed the inclusion of these provisions in the Interconnection Agreement, the reciprocal compensation rule (like many other FCC rules) had been stayed by the 8th Circuit and was not binding on the Commission. The parties, however, anticipated that subsequent court rulings could affect the interconnection agreement. They therefore included in the interconnection agreement a change-of-law provision – which was approved by the Commission – that requires the parties to amend the agreement if any of its provisions becomes unlawful as the result of subsequent judicial action. In this case, the change-of-law provision is triggered by the court

decisions upholding the FCC's reciprocal compensation rule. The provisions of Section 2.4.2 of Part A of the Interconnection Agreement have been rendered unlawful to the extent that they *preclude* WorldCom from receiving reciprocal compensation at the tandem rate under factual circumstances in which WorldCom is affirmatively *entitled* to such compensation by the reinstated provisions of Rule 51.711. Since the parties have been unable to agree on the proper interpretation of the reinstated rule, their dispute is ripe for resolution under the provisions of the agreement which call for further arbitration before the Commission.

After the Commission decides the proper interpretation of Rule 51.711, and concludes that the Interconnection Agreement must be amended to bring it into compliance with that rule, the Commission must make a factual determination as to whether WorldCom's local network qualifies it to receive reciprocal compensation under the geographic test and/or functionality test in the FCC's rule. The record in this case clearly demonstrates that WorldCom's local switches serve geographic areas comparable to those served by BellSouth's local tandem switches and it is therefore entitled under the geographic test to be compensated for terminating local traffic at the higher tandem interconnection rate.

Even if the Commission were to construe the FCC's reciprocal compensation rule to impose a functionality test in addition to the geographic test, the record demonstrates that WorldCom's local switching network provides the same traffic aggregation and distribution function performed by BellSouth's tandem switching network, albeit by the use of a more modern fiber ring architecture. Regardless of how the Commission construes the FCC's rule, WorldCom is entitled on the record in this case to receive reciprocal compensation at the tandem interconnection rate for calls terminated by its local switches.

Finally, the parties have stipulated that if the Commission rules in WorldCom's favor on the law and the facts, BellSouth will be required to compensate WorldCom at the tandem rate for the duration of the current agreements. It will also be required to compensate WorldCom retroactively to July 8, 1999 – the date on which WorldCom requested BellSouth to negotiate an appropriate amendment to the Interconnection Agreement – for the difference between the end office rate that BellSouth has paid to WorldCom and the tandem rate to which WorldCom was entitled.

Specific Issues

WorldCom's positions on the specific issues identified in the Prehearing Order, together with a summary of the evidence supporting its positions, are set forth below.

Issue 1. Under FCC Rule 51.711, would MCI 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?

WorldCom: Yes. Under FCC Rule 51.711 and the FCC's Local Interconnection Order, MCI 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.

The Rule

The applicable portion of FCC Rule 51.711 states that:

- (a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section [not applicable in this case]:
 - (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC 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*.

* * *

- (3) 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 the incumbent LEC *is* the incumbent LEC's tandem interconnection rate.

(Emphasis added.)

Its Plain Reading

A plain reading of Rule 51.711(a) compels the conclusion that the rule establishes an *either-or* test for determining when an ALEC is entitled to receive symmetrical compensation at the tandem interconnection rate. Paragraph (a)(1) of the rule establishes a functionality test. An ALEC is entitled to the same compensation as the incumbent whenever it performs the same services. If an ALEC performs tandem switching, or provides the same underlying traffic aggregation and distribution service via a different technological means, it is entitled to the tandem interconnection rate. Paragraph (a)(3) of the rule establishes an independent geographic coverage test. If an ALEC's switch serves a geographic area comparable to that served by the incumbent's tandem switch, the appropriate rate *is* the tandem interconnection rate, regardless of the functionality involved.

The Underlying Policy

Even if the reciprocal compensation rule were not clear on its face, this *either-or* test is the only reading of the rule that is consistent with the policy the FCC was attempting to implement. The "legislative history" of Rule 51.711 is contained in Paragraphs 1085 through 1090 of the FCC's First Report and Order (released August 8, 1996) in CC Docket 96-325 (the "*Local Competition Order*"). A review of this portion of the *Local Competition Order* reveals the following rationale for the symmetrical compensation rule:

- Typically the ILEC and ALEC will be providing service in the same geographic area, so their forward-looking costs generally should be the same. (Argenbright, Tr. 68) The use of the ILEC's costs as a proxy thus satisfies the requirement of Section 252(d)(2) of the Telecommunications Act of 1996 ("Act") that costs be determined based on a reasonable approximation of the additional costs of transporting or terminating calls. *Local Competition Order* ¶ 1085.
- The imposition of symmetrical rates gives all carriers the appropriate incentives to minimize costs. An ALEC that minimizes its costs does not experience any change in its local interconnection revenues, and thus reaps the benefits of its increased efficiency. Similarly, if an ILEC becomes more efficient, the savings it experiences from terminating its own traffic will outweigh any loss of revenue from ALECs for terminating their traffic. (Argenbright, Tr. 68-69) *Id.* at ¶1086.
- The use of symmetrical rates reduces the ILECs' ability to use its bargaining power to impose excessively high termination charges. (Argenbright, Tr. 69) *Id.* at ¶ 1087.
- Symmetrical rates are easier to derive and manage than asymmetrical rates based on the costs of each carrier. *Id.* at ¶ 1088.
- In light of these advantages, rates shall be symmetrical absent an ALEC submitting a cost study which proves that its efficiently incurred costs are greater than those of the incumbent and it is therefore entitled to a higher, asymmetrical rate. *Id.* at ¶ 1089.
- Because of ILEC cost differences, state commissions may establish rates for ILECs that vary depending on whether traffic is routed through a tandem switch or directly to an end-office switch. (Argenbright, Tr. 69-70) *Id.* at ¶ 1090.

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

Id. at ¶ 1090 (emphasis added).

Paragraph 1090 of the *Local Competition Order* uses the same unambiguous language as subsection (a)(3) of Rule 51.711 -- where the ALEC's switch serves a geographic area comparable to that served by the ILEC's tandem, the ALEC is entitled to receive the ILEC's tandem interconnection rate.

In practical terms, the FCC reached three conclusions. First, it is appropriate to establish an additional rate for ILECs when they use a tandem switch to transport and terminate an ALEC's traffic. Second, states may consider whether some or all calls terminated by an ALEC may be priced at the higher rate if the ALEC uses alternative technologies or architectures to perform functions similar to those performed by the ILEC's tandem switch. Third, the higher rate must be applied when the ALEC's switch serves a geographic area comparable to that served by the ILEC's tandem switch. (Argenbright, Tr. 70)

BellSouth's reading of the reciprocal compensation rule, which requires *both* comparable geographic coverage *and* trunk-to-trunk tandem switching functionality is inconsistent with the underlying principle that each carrier should be encouraged to minimize its costs. Under

BellSouth's approach, WorldCom would never be entitled to receive the tandem switching rate unless it had multiple switches in a given geographic area that replicated BellSouth's hierarchical switching network. (Cox, Tr. 179) An ALEC cannot have a traditional tandem switch – and perform traditional trunk-to-trunk switching – without having at least two end-office switches subtending the tandem. While this may well have been the most efficient network design at the time it was deployed by BellSouth, advances in technology have extended the reach of end-office switches, particularly when used with fiber ring networks, and have moved much of the routing function out of the switch and into the electronics on the fiber ring itself. (Argenbright, Tr. 147) Under BellSouth's reading of the rule, however, an ALEC could never receive the tandem interconnection rate unless it deployed a tandem switch that performed traditional trunk-to-trunk circuit switching. (Cox, Tr. 181)

BellSouth's witness Cox does pay lip-service to the language in Paragraph 1090 of the *Local Competition Order*, which requires a state commission to consider whether new technologies used by an ALEC perform functions similar to those performed by an ILEC's tandem switch. (Cox. Tr. 180) However, she effectively writes that language out of the order by claiming that she is not aware of any current technology – including the fiber ring architecture specifically referenced by the FCC – which meets the functional similarity standard. (Cox, Tr. 181-183) She admits that under BellSouth's view, WorldCom could never receive the tandem interconnection rate unless it deployed multiple switches and performed a trunk-to-trunk circuit switching function. (Cox, Tr. 179-180)

When Rule 51.711 is read together with Paragraphs 1085-1090 of the *Local Competition Order*, it is clear that the FCC did not intend that ALECs' be required to mimic the ILECs' network architecture in order to receive the tandem interconnection rate. As Commissioner

Deason observed, from a policy perspective the technology used should be irrelevant. From the customer's viewpoint the question should be whether the ALEC performs the same function as BellSouth, in this case the termination of traffic over a comparable geographic area. (See, Tr. 193)

Court Decisions

WorldCom acknowledges that there is a split of authority among both the state commissions and the federal courts as to the circumstances under which the tandem interconnection rate is available to ALECs.¹ Nevertheless, at least two of the decisions relied on by BellSouth for the proposition that an ALEC must meet a two-prong test of geographic coverage and comparable functionality do not support that BellSouth's conclusion.

First, BellSouth relies on the District Court's decision in *US West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 968 (D. Minn 1999) for the proposition that a state commission must consider the functionality of a competing carrier's switch in addition to its geographic scope. That reliance is misplaced. A careful review of the court's opinion reveals that both the Minnesota PUC (which acted while the FCC rule was vacated) and the District Court treated the inquiry as an *either-or* question. At the commission level, the decision that AWS's wireless MSC switch entitled it to the tandem interconnection rate was based on the provision of functionality comparable to that of a US West tandem. As the PUC told the court in its briefs, it did *not* base its final decision on the geographic reach of the switches. *Id.* at 979, footnote 8. Thus the PUC based its decision solely on the presence of comparable functionality – the first prong of the *either-or* test.

¹ Commissions whose decisions support the application of an *either/or* test include North Carolina, Ohio and Washington. (Argenbright, Tr. 85-87)

The District Court upheld the Minnesota PUC's decision based on that finding of comparable functionality. Importantly, the Court went on to state that:

The evidence also indicates that the MSC covers a geographic area comparable to that covered by a tandem switch. Pursuant to the FCC rules, *this alone* provides sufficient grounds for a finding that the appropriate rate for the MSC is the tandem switch rate.

Id. at 979 (emphasis added).

Thus while the court upheld the PUC's decision based solely on the first portion of the *either-or* test, it also concluded that it could have upheld the decision based solely on the second prong of that test, saying that "the reinstated rule [51.711(a)(3)] and the comparable geographic reach of the switches reinforces the MPUC's final decision." *Id.* at footnote 8.

BellSouth also relies on a Ninth Circuit Court of Appeals decision which upheld an arbitration decision of the Washington Utilities and Transportation Commission giving MFS the right to receive compensation at the tandem rate for traffic terminated through its single switch in Washington. *U.S. West Communications v. MFS Intelenet, Inc.*, 199 F.3d 1112 (9th Cir. 1999).

The Court in that case stated:

The Commission's classification of MFS's switch as a tandem switch was not arbitrary or capricious. [footnote omitted] The Commission properly considered whether MFS's switch performs similar function and serves a geographic area comparable to U.S. West's tandem switch. See Local Competition Order at ¶ 1090. The Commission found that MFS's switch "is comparable in geographic scope" to U.S. West's tandem switch, and "performs the function of aggregating traffic from widespread remote locations" as a tandem switch does.

Id. at 1124.

One cannot tell from the Court's decision whether it was endorsing an *either-or* test or a *two-prong* test. At most the decision says that it was proper for the Commission to consider both questions – which it would have had to do no matter how the test is construed – and that the Commission permissibly classified MFS' switch as a tandem switch based on its geographic coverage and the fact that it “performs the function of aggregating traffic from widespread remote locations.” In response to a question from Commissioner Deason, Mr. Argenbright confirmed that the Washington Commission applied, and the Ninth Circuit upheld, an end result test under which the completion of a call from widespread remote locations is treated for pricing purposes as the equivalent of what a tandem switch does, even though there is no traditional tandem (trunk-to-trunk) switching involved. (Tr. 115) This reading of the Washington decision is supported by the fact that MFS had deployed only a single switch, and therefore could not have performed the trunk-to-trunk switching function which BellSouth claims is required. (Argenbright, Tr. 115) *See*, Arbitrator's Report and Decision (November 1996) and Order Approving Negotiated and Arbitrated Interconnection Agreement (January 1997), *In the Matter of MFS and US West*, Docket No. UT-960323 (Washington Utilities and Transportation Commission).

This Commission's Decisions

This Commission has considered the application of the tandem interconnection rate in two sets of decisions. The first set consists of decisions from the initial round of arbitrations under the Act. Where the issue was litigated in these arbitrations, the Commission held that ALECs were not entitled to receive the tandem interconnection rate unless they provided traditional tandem functionality using both end office and tandem switches. These decisions were rendered during the time that Rule 51.711 had been stayed by the 8th Circuit, however, and they specifically state that they do not apply the then-vacated rule. (Argenbright, Tr. 63, 64, 83)

For example, in the order which led to the inclusion in the WorldCom/BellSouth Interconnection Agreements of the provisions that are at issue in this case, the Commission expressly noted that “the portions of the FCC rules that MCI used in its rationale are currently stayed.” *In re: Petition of MCI Metro for Arbitration with BellSouth*, Docket No. 960846-TP, Order No. 97-0309-FOF-TP at page 11 (March 21, 1997).

Similarly in the MCI/Sprint arbitration, the Commission stated that “we will not rely on these stayed portions of the FCC Rules and [Local Competition] Order as a basis for our decision. *In re: Petition of MCI Metro for Arbitration with United Telephone and Central Telephone*, Docket No. 961230-TP, Order No. PSC-97-0294-FOF-TP at page 9 (March 14, 1997) (“*MCI/Sprint*”). In *MCI/Sprint*, the Commission rejected MCI’s position that it was entitled to be compensated for performing “equivalent functionalities” and concluded instead that the Act does not entitle MCI to be paid for tandem switching unless it actually deploys both tandem and end office switches in its network. *Id.* at 11.

While this may have been a permissible reading of the Act during the period when the FCC’s reciprocal compensation rule was stayed, it is no longer a permissible reading following the Supreme Court’s decision upholding the FCC’s differing interpretation of the Act and the 8th Circuit’s reinstatement of Rule 51.711.

The second set of orders in which the Commission has considered the issue of reciprocal compensation are decisions from the second round of arbitrations, which have been held subsequent to the reinstatement of Rule 51.711. In these arbitrations, involving ICG Telecom, ITC^DeltaCom, and Intermedia Telecommunications, the Commission has held on the facts before it in each case that the ALEC was not entitled to compensation at the tandem rate because it failed to prove that its switch served a geographic area comparable to BellSouth’s tandem

switch and failed to prove that its switch provided comparable functionality. While these decisions demonstrate that the Commission has considered and made findings on both geographic coverage and comparable functionality, it is not clear from the decisions whether the Commission was applying these considerations as an *either-or* test or as a *two-prong* test. Since the ALEC in each case failed both tests, the Commission never squarely addressed what would happen if the ALEC established that it met one test, but not the other.

In the ICG/BellSouth arbitration, the Commission found that:

The evidence of record shows that ICG presently has no facilities (i.e., switches or transport facilities) in Florida. . . . Because it currently does not have a network in place in Florida, we cannot determine if ICG's network will, in fact, serve a geographic area comparable to one that is served by a BellSouth tandem switch.

While FCC Rule 47 F.C.C. *Section 51.711 allows us to provide for reciprocal compensation at the tandem rate if the switch of a carrier other than an incumbent LEC serves a geographic area comparable to that served by the incumbent LEC's tandem switch*, the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill this geographic criterion. Similarly, the evidence of record does not show that ICG will deploy both a tandem and end office switch in its network. In addition, since tandem switching is described by both parties as performing the function of transferring telecommunications between two trunks as an intermediate switch or connection, we do not believe this function will or can be performed by ICG's single switch. As a result, we cannot at this time require that ICG be compensated for the tandem element of termination.

In re: ICG Petition for Arbitration with BellSouth, Docket No. 990691-TP, Order No. PSC-00-0128-FOF-TP at Part VI (January 14, 2000) (emphasis added). Contrary to BellSouth's assertion that this order establishes a two-prong test, WorldCom submits that a fair reading of the emphasized language demonstrates the Commission recognized that geographic coverage alone

would be sufficient, but that ICG simply had failed to make a factual showing that it would indeed serve a comparable geographic area. (See Argenbright, Tr. 84-85)

In the ITC^DeltaCom/BST arbitration, the primary issue was what rate to establish for local interconnection – the existing rate of \$0.009 which did not distinguish between end office switching and tandem switching; ITC^DeltaCom’s proposed rate of \$0.0045, which likewise did not distinguish between end office switching and tandem switching; or BellSouth proposed two-tier rate structure which included different rates for end office switching and tandem switching. In the course of deciding to continue the unitary rate of \$0.009, the Commission noted in passing that while ITC^DeltaCom asserted that its Florida switch performs the same functions as a BellSouth tandem, “there is insufficient evidence in the record to determine whether the end office switching rate or the tandem switching rate would apply.” *In re: ITC^DeltaCom Petition for Arbitration with BellSouth*, Docket No. 990750-TP, Order No. PSC-00-0537-FOF-TP, Part IX (March 15, 2000). This decision sheds no light on whether the Commission interprets Rule 51.711 to constitute an *either-or* test or a *two-prong* test, since it adopted a unitary rate which does not vary depending on the type of switching employed by ITC^DeltaCom.

Finally, in the recent decision in the Intermedia/BellSouth arbitration, the Commission first concluded that Intermedia’s single switch did not perform a local tandem function of connecting one trunk to another trunk and that Intermedia therefore was not entitled to the tandem rate by reason of providing comparable functionality. The Commission then went on to consider the question of geographic coverage and said:

We find the evidence of record insufficient to determine if the second, geographic criterion is met. We are unable to reasonably determine if Intermedia is actually serving the areas they have designated as local calling areas. As such, we are unable to determine that Intermedia should be

compensated at the tandem rate *based on geographic coverage*.

In re: Petition of Intermedia for Arbitration with BellSouth, Docket No. 991854-TP, Order No. PSC-00-1519-FOF-TP, Part IV (August 22, 2000). Again this decision does not support BellSouth's contention that the Commission has applied a *two-prong* test. If anything, it appears to acknowledge that Intermedia would be entitled to the tandem rate based on geographic coverage but for a failure of proof regarding the area actually served by its switch. As Commissioner Jacobs observed, "I'm reading this through and while we do address both prongs, I don't see where we actually announce that there must be combined tests." (Tr. 52-53)

Florida Policy

WorldCom concedes that to date this Commission has consistently held that in order to prove comparable functionality, an ALEC must show that it performs a traditional trunk-to-trunk tandem switching function. This record provides sound policy reasons, however, that the Commission should reconsider this aspect of its prior decisions and prospectively adopt a policy under which an ALEC can meet the comparable functionality test through use of an alternative network architecture that provides the same underlying function – aggregation and distribution of traffic from widespread geographic locations – that has been adopted by the Washington Commission and endorsed by the Ninth Circuit Court of Appeals.

This would be sound policy for Florida for several reasons:

- BellSouth should not be permitted to get a "discounted ride" for widespread geographic termination on an ALEC's network. This is what would happen, however, if BellSouth avoided the cost of tandem switching on its own network while paying the ALEC only for the cost of end office switching. (See Argenbright,

Tr. 146) The effect of this pricing scheme would be to give BellSouth, rather than the ALEC, the benefit of the ALEC's more efficient network architecture.

- In a competitive market, BellSouth should not receive higher revenue just because its costs are higher. Instead, each party should be permitted to deploy the network that is most efficient for it, and to charge the same rate for providing the same call termination service. (See Commissioner Deason's questions to Cox, Tr. 187, 192-193)
- Unless compensation is symmetrical for comparable traffic termination service, new entrants will be given a improper pricing incentive that rewards the deployment of traditional hierarchical switching networks, rather than the more efficient network configurations available with newer technology. (See Commissioner Deason's and Jaber's questions to Cox, Tr. 196-200)

Summary

Based on the plain language of Rule 51.711 and the sound policy underlying that rule, the Commission should conclude that WorldCom is entitled to receive the tandem interconnection rate for terminating calls from BellSouth subscribers to WorldCom end users if it proves *either* that its switches actually serve a geographic area comparable to that served by BellSouth's tandems *or* that its switching network performs a function comparable to that performed by a BellSouth tandem. To the extent that a functional comparability test is applied – either as an independent test or as one part of a two-prong test – comparability should be defined in terms of traffic aggregation and termination, rather than in narrower terms of trunk-to-trunk circuit switching.

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

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

Geographic Comparability

The geographic areas served by WorldCom's single switch in the Orlando area and its four switches in the South Florida area are shown on both Exhibit 3, Schedules MEA-5 and MEA-6 and as a red cross-hatched area on Exhibit 6. Similarly, the geographic areas served by BellSouth's two local tandems in the Orlando area and its two local tandems in the South Florida area are shown on both Exhibit 7, Schedule CKC-1 pages 1 and 3 and as a dark green background area on Exhibit 6. (Argenbright, Tr. 96-98)

As shown on Exhibit 6, the WorldCom switch in Orlando is configured and equipped to serve 14 rate centers (some belonging to BellSouth and some belonging to Sprint) and WorldCom is actually serving customers in nine of those rate centers. (Argenbright, Tr. 73, 91) This compares to only four rate centers being served by BellSouth's two local tandems.² WorldCom has taken all the necessary steps, including the opening of NXXs, to offer service in all 14 rate centers, and WorldCom's sales force is capable of making a sale to customers in any of these rate centers at any time. (See Argenbright, Tr. 132, 148-149)

Similarly, WorldCom's four switches in the South Florida area serve a geographic area that is slightly larger than that served by BellSouth's two local tandems. Together WorldCom's South Florida network is configured and equipped to provide service to 12 BellSouth rate centers,

² Although Exhibit 6 indicates that the East Orange and Oviedo rate centers are served by a BellSouth local tandem, an update to BellSouth's exhibits shows that these rate centers are not included in its local tandems' geographic coverage area. (See, Tr. 130; Ex. 7, Schedule CKC-1 at page 1)

and WorldCom is actually serving customers in 11 of those rate centers. (Argenbright, Tr. 73-74, 91-92) This compares to only 8 rate centers served by the two BellSouth tandems in the area.³ As was the case in Orlando, WorldCom has taken all the necessary steps, including the opening of NXXs, to provide service in all 12 rate centers, and its sales force is capable of making a sale to customers in any of these rate centers at any time. (Argenbright, Tr. 132, 148-149)

Unlike the situation the Commission faced in the ICG/BellSouth arbitration, WorldCom's switches are in place today and are serving customers throughout large geographic areas. And unlike the situation in the Intermedia/BellSouth arbitration, WorldCom has provided evidence not merely that it stands ready to serve customers throughout a large WorldCom-defined local calling area, but that it is actually serving customers today in a number of BellSouth's local calling areas that collectively are comparable in scope to the areas served by BellSouth's local tandem switches.⁴

On cross-examination of Mr. Argenbright, BellSouth established that BellSouth serves customers in more cities than WorldCom serves through its on-net system. (Argenbright, Tr. 133-136) This is irrelevant for two reasons. First, as described below, WorldCom serves both on-net customers and off-net customers and there is no evidence as to the number of additional cities served by WorldCom on an off-net basis. (See Argenbright, Tr. 136, 150) Second, and more importantly, geographic comparability does not require that an ALEC have customers in every location served by the ILEC. Building market share is a slow process. Adopting a test that

³ Although Exhibit 6 indicates that the North Dade rate center is served by a BellSouth local tandem, an update to BellSouth's exhibits shows that this rate center is not included in its local tandem's geographic coverage area. (See, Tr. 97; Ex. 7, Schedule CKC-1 at page 3)

⁴ In the original MCI/BellSouth arbitration, the Commission never reached the geographic comparability question, and never took evidence or made findings on the geographic reach of WorldCom's switches. (Cox, Tr. 190)

requires an ALEC to have customers next door to every ILEC customer would ensure that an ALEC would never receive symmetrical compensation for providing termination to comparable geographic areas. The FCC rule requires geographic comparability, not geographic equivalence. (Argenbright, Tr. 137-138)

Comparability of Service

While the FCC Rule provides that WorldCom is entitled to receive the tandem interconnection rate based on geographic coverage alone, even if the Commission were to apply a “comparable functionality” test in addition, WorldCom would still be entitled to receive the tandem interconnection rate. The record in this case shows that WorldCom’s customers in the Orlando and South Florida areas are served through by a network that employs state-of-the-art equipment and design principles based on technology available today. This local network has been built within the past few years using optical fiber rings with SONET transmission, which makes it possible to serve large geographic areas from a single switch. In contrast, BellSouth’s network, which was developed over many decades, employs an architecture characterized by a large number of switches within a hierarchical system with relatively short subscriber loops. (Argenbright, Tr. 72)

Customers on the WorldCom network are served by a variety of means. (Argenbright, Tr. 88-89) Some customers are located in “on-net” buildings served by WorldCom’s SONET fiber rings and are connected via these rings directly to WorldCom’s local switch. The electronics deployed on these fiber rings performs a traffic routing function that is similar to that performed by a traditional circuit-based switch. (Argenbright, Tr. 89, 147) Other customers who are not located on WorldCom’s fiber ring network are served either by local loops purchased from BellSouth and connected to WorldCom equipment collocated in a BellSouth central office, or by

DS1 loop/transport combinations, which are high capacity loops obtained from BellSouth to connect a WorldCom customer to WorldCom's local switch. (Argenbright, Tr. 89) By using a combination of these serving arrangements, WorldCom's local switches are able to perform the function of aggregating and distributing traffic throughout a large geographic area, the same function performed in a hierarchical network by a tandem switch. (Argenbright, Tr. 106-107) While WorldCom does not have investment in tandem switches, it does have investment in multiple fiber rings, multiple SONET systems, and all the related equipment that is necessary to extend the geographic reach of its local switches. (Argenbright, Tr. 125-126) WorldCom therefore should be entitled, even under a functionality test, to obtain compensation for performing a traffic aggregation and distribution function, albeit by means of a different network architecture than that deployed by BellSouth.

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?

WorldCom: Yes. The compensation provisions of the existing Interconnection Agreements are unlawful under the reinstated FCC Rule 51.711 because they do not provide reciprocal compensation when MCI 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.

The parties included two provisions in their Interconnection Agreements that address what is to be done in the event a change in law occurs during the life of the agreements.⁵ The principal

⁵ These provisions are included in the MCI metro/BellSouth Interconnection Agreement arbitrated by the Commission in Docket No. 960846-TP. MCI WORLDCOM Communications, Inc. subsequently "opted-in" to the MCI metro agreement, so the same contractual provisions are applicable to both petitioners in this case. (Argenbright, Tr. 63-64, 66-67)

change of law provision that is applicable here is Part A, Section 2.2 of the agreement. As set out in Mr. Argenbright's testimony (Tr. 74-75), this provision states:

In the event the FCC or the State regulatory body promulgates rules or regulations, or issues orders, or a court with appropriate jurisdiction issues orders, which make unlawful any provision of this Agreement, the parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with such rules, regulations or orders. In the event the parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the parties shall resolve their dispute under the applicable procedures set forth in Section 23 (Dispute Resolution Procedures) hereof.

The sole question for the Commission to decide is whether, as a result of this change in law provision in the contract, BellSouth should be required to execute an amendment to provide for reciprocal compensation in accordance with the terms of reinstated Rule 51.711. The answer to that question is "yes."⁶

Section 2.4.2 of Part A of the Interconnection Agreement contains language specified by the Commission during the time that Rule 51.711 had been stayed. As set forth in Mr.

Argenbright's testimony (Tr. 62-63), this provision states:

2.42. When BellSouth terminates calls to MCI's subscribers using MCI's switch, BellSouth shall pay to MCI the appropriate interconnection rate(s). ***BellSouth shall not compensate MCI for transport and tandem switching unless MCI actually performs each function.***

(Emphasis added.)

⁶ Even counsel for BellSouth concedes that the change-of-law provision is triggered if the Commission determines that the FCC rule establishes an *either-or* test. (Tr. 34)

Under this language, WorldCom is *precluded* from receiving compensation at the tandem interconnection rate (which includes transport and tandem switching) unless it actually performs a tandem switching function. This preclusion has been made unlawful by the reinstatement of Rule 51.711, since WorldCom now is affirmatively entitled by that rule to receive the tandem interconnection rate based solely on the comparable geographic coverage provided by its switches in Florida. (Argenbright, Tr. 75, 101-102)

The Commission should therefore order that the Agreement be amended to permit WorldCom to recover the tandem interconnection rate based on the geographic coverage of its switches. This should be coupled with the finding under Issue 2 that WorldCom's switches in the Orlando and South Florida areas meet this geographic coverage test and that WorldCom is therefore entitled to receive the tandem interconnection rate for local traffic terminated through those switches.

Issue 4. Are MCI 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?

*WorldCom: This issue has been stipulated.**

At the beginning of the hearing, the parties announced a stipulation as to the effective date of any ruling that entitles WorldCom to receive compensation at the tandem interconnection rate. Under that stipulation, if the Commission rules in WorldCom's favor on the entitlement issue, BellSouth's obligation to pay the higher rate will be retroactive to the date WorldCom requested an amendment to the interconnection agreement. (Tr. 6) As shown by Exhibit 1, Schedule MEA-1, that effective date would be July 8, 1999.

While this issue is moot as a result of the stipulation, if the Commission rules that WorldCom is entitled to receive the tandem interconnection rate, this stipulation should be reflected in the Commission's final order by establishing July 8, 1999 as the effective date of the required amendments to the interconnection agreements and ordering BellSouth to make payments to WorldCom retroactive to that date.


Conclusion

Based on the provisions of FCC Rule 51.711 and the record in this case, the Commission should:

- (a) determine that the rule establishes an *either-or* test for determining WorldCom's entitlement to compensation for traffic termination at the tandem interconnection rate;
- (b) determine that WorldCom's switches cover a geographic area comparable to that served by BellSouth's tandem switches;
- (c) determine that WorldCom's is therefore entitled to receive compensation at the tandem interconnection rate retroactive to the stipulated effective date of July 8, 1999; and
- (d) determine that although it is not a prerequisite to WorldCom's right to receive the tandem interconnection rate, its network architecture does provide the same service (i.e. traffic aggregation and distribution over a widespread geographic area) as is provided by BellSouth's tandem switches.

RESPECTFULLY SUBMITTED this 4th day of October, 2000.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U.S. Mail or Hand Delivery (*) this 4th day of October, 2000:

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