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April 16, 2001

BY HAND DELIVERY

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

Re: Docket No. 000649-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. (collectively "WorldCom") are the original and fifteen copies of their Motion for Reconsideration.

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

Very truly yours,



Richard D. Melson

RDM/kgg

cc: Parties of Record

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DOCUMENT NUMBER-DATE

04655 APR 16 2001

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access)
Transmission Services LLC and MCI)
WorldCom Communications, Inc. for)
arbitration of certain terms and conditions)
of a proposed agreement with BellSouth)
Telecommunications, Inc. concerning)
interconnection and resale under the)
Telecommunications Act of 1996.)
_____)

Docket No. 000649-TP
Filed: April 16, 2001

WORLD COM'S MOTION FOR RECONSIDERATION

COME NOW, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively, "WorldCom") and hereby file their Motion for Reconsideration and Clarification. WorldCom respectfully submits that in its March 30, 2001 Order ("Order"), the Commission overlooked or failed to consider certain key points in its resolution of Issues 6, 18, 22 and 107 and WorldCom therefore requests that the Commission reconsider its rulings on those issues, for the reasons explained below.

ISSUE 6: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network?

WORLD COM: *Yes. BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in BellSouth's network. *****

Issue 6 concerns whether BellSouth must combine unbundled network elements ("UNEs") for WorldCom that BellSouth ordinarily combines within its own network. In its Order, the Commission ruled based on federal law that BellSouth is not required to do so. Although WorldCom respectfully disagrees with the Commission concerning its interpretation of

federal law, the basis for this motion is that the Commission overlooked WorldCom's argument that the Commission also should rule in WorldCom's favor as a matter of *state* law.

As WorldCom noted in its Post-Hearing Brief, Section 364.161(1), Florida Statutes, gives the Commission the authority to establish rates, terms and conditions for the offering of unbundled elements. Based on this state law authority, the Commission should establish terms and conditions that require BellSouth to offer combinations of UNEs that are "typically combined" in its network. The resolution of this issue determines whether BellSouth will be required to provide WorldCom with a UNE combination at UNE rates when the UNE combination is not currently in place. Examples of such situations include a customer moving to a new home and an existing customer obtaining a new telephone line. The absurdity of BellSouth's position was illustrated during the cross examination of BellSouth witness Cox:

Q Assume that Commissioner Jacobs is a single line residential customer of BellSouth. If he says, "I want to move my service to WorldCom," and WorldCom says, "I want to serve that using the loop/port combination," BellSouth will sell that UNE combination to us, right?

A Yes, it is already combined.

Q All right. Now, if Commissioner Jacobs decides his kids are getting old enough that he wants to add a second line, he doesn't have one today and he says, "Well, I'm going to try WorldCom for the second line." And he comes to WorldCom and says, "I would like to buy that from you." And we are providing service in Jacksonville using loop/port combinations. BellSouth would not sell us that loop/port combination because he doesn't already have a second line today, is that right?

A That's correct. We would not combine that at TELRIC prices.

Q Okay. Well, Commissioner Jacobs at this point has got sort of frustrated with WorldCom, so he says, "Well, if I can't get it from you I'm going to get it from BellSouth." So he calls you that afternoon and says, "I would like to order up that second line." You will install a second line for him, won't you?

A Yes. If the facilities are there, we would.

Q Okay. He says, you know, something must have been wrong with WorldCom not wanting to serve me. Let me call them again and see if they will serve me. So he calls us the next day and says, "Can you serve me, and let me transfer this second line from BellSouth to you?" And we say, "Sure." And you will sell that to us on a combined basis, right?

A It would then be combined. . . .

T.910-11.

Florida consumers attempting to order an additional line, or service for their new home, should not be left feeling they are in the middle of Abbott and Costello's "Who's on First" routine. One can imagine a consumer saying: "Now let me get this straight. I get my service from WorldCom, but if I want another line, I have to order it from BellSouth. After I order it from BellSouth, I can turn around the next day and ask that the service for the second line be transferred to WorldCom. Why can't I just order it from WorldCom in the first place?" The answer to the question is obvious. Of course the consumer ought to be able to order the line from WorldCom in the first place, rather than having to go through pointless red tape. Nothing in federal law prohibits this Commission from finding, as a matter of state law, that BellSouth is required to combine ordinarily combined UNEs at UNE rates. This Commission can make the right decision for Florida consumers based on state law, and WorldCom respectfully encourages the Commission to do so.

ISSUE 18: Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers?

WORLDCOM: *Yes. BellSouth is required to provide dedicated interoffice transmission facilities (where such facilities exist today) to the locations and equipment designated by WorldCom, including network nodes**

connected to WorldCom switches and to the wire centers and switches of other requesting carriers.***

Issue 18 concerns the extent to which BellSouth must provide dedicated transport to WorldCom. WorldCom's position is that BellSouth is required to provide dedicated transport throughout its existing network, including to WorldCom network nodes and to the switches of other requesting carriers. The Commission ruled that "BellSouth is not required to provide WorldCom with unbundled dedicated transport between other carriers' locations, or between WorldCom switches." Order at 46. WorldCom respectfully disagrees with the Commission's decision concerning dedicated transport between WorldCom switches.¹ BellSouth's position is that it *will* provide dedicated transport between WorldCom switches as separate UNEs (T. 928-929), which the Commission overlooked in making its decision. At a minimum, the Order should be modified to take into account this point.

Once this clarification is made, the only dispute between the parties concerning dedicated transport between WorldCom switches (or nodes) is whether BellSouth should be required to connect the dedicated transport links to provide a complete circuit between two WorldCom locations as a single UNE. BellSouth wants to provide the separate links and require WorldCom to cross connect them (or pay BellSouth "market" rates to do so). WorldCom wants BellSouth to cross connect the transport segments just as BellSouth ordinarily does in its own network, because without such cross connection the utility of dedicated transport would be largely undermined. As with Issue 6, in making its decision the Commission focused exclusively on federal law and overlooked WorldCom's request that the Commission also consider state law. WorldCom respectfully submits the Commission should conclude that under state law BellSouth

¹ WorldCom also disagrees with the Commission's ruling concerning the switches of other carriers, but is not addressing that point in this motion.

should be required to cross connect dedicated transport links, just as it does for its own retail customers.

ISSUE 22: For purposes of the interconnection agreement between WorldCom and BellSouth, should the Interconnection Agreements contain WorldCom's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations?

WORLD COM: ***Yes. The Interconnection Agreements should contain WorldCom's proposed terms addressing line sharing. In particular, an existing customer obtaining data service from a DSL provider via line-sharing with BellSouth should be able to retain that data service if WorldCom begins to provide voice service via UNE-P.***

Issue 22 concerns the terms and conditions on which line sharing will be offered. Under WorldCom's proposal, BellSouth would be required to provision UNE-P to WorldCom in a manner that permits WorldCom's customer to retain data service from a data ALEC ("DLEC") that is already providing the customer service via line sharing with BellSouth. Based on the law that existed when this case was briefed, the Commission ruled that BellSouth is not required to provide line sharing to a voice provider using the UNE-platform. The law has since changed. The FCC eliminated any doubt raised by BellSouth that it is required to provide UNE-P line splitting in a recent Order in which it stated:

We grant the petitions of AT&T and WorldCom with respect to their request for clarification that an incumbent LEC must permit competing carriers providing voice service using the UNE-platform to either self-provision necessary equipment or partner with a competitive data carrier to provide xDSL service on the same line. By doing so, we clarify that existing Commission rules support the availability of line splitting.

...

We find that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. The Commission's existing rules require incumbent LECs to provide competing carriers with access to unbundled loops in a manner that allows the competing carrier "to provide any telecommunications service that can be offered by means of that network element." Our rules also state that

“[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on . . . the use of unbundled network elements that would impair the ability of” a competing carrier “to offer a telecommunications service in the manner” that the competing carrier “intends.” We further note that the definition of “network element” in the Act does not restrict the services that may be offered by a competing carrier, and expressly includes “features, functions, and capabilities that are provided by means of such facility or equipment.” As a result, independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop. This obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting.

Thus, as AT&T and WorldCom contend, incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter. For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services. As we described in the *Texas 271 Order*, in this situation, the incumbent must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-platform is not capable of providing xDSL service.

In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 98-147, Order on Reconsideration at ¶¶ 16, 18, 19 (rel. January 19, 2001) (footnotes omitted).

WorldCom submits that the Commission should consider this additional authority and modify its ruling to permit WorldCom to engage in line sharing when it provides voice service via UNE-P, and specifically to require BellSouth to accommodate line splitting when a voice customer served by an xDSL provider migrates its voice service to WorldCom.

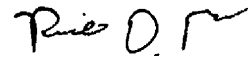
ISSUE 107: For purposes of the interconnection agreement between WorldCom and BellSouth, should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?

WORLD COM: *Yes. There should be no limitation of liability for material breaches of the Agreements.*****

Issue 107 involves the terms of the liability cap to be incorporated into the agreement.

WorldCom proposed a provision that included both liability cap language and a broad exception to the cap for a party's failure to honor in one or more material respects any one or more of the material provisions of the Agreement. WorldCom opposes a liability cap unless this exception is present. BellSouth, on the other hand, proposed the cap without the exception. It is evident from the Commission's Order that it did not understand WorldCom's position because the Commission stated that "WorldCom has argued that because there are inequities in the bargaining powers of the parties, the Commission should adopt a liquidated damages provision to level the playing field." Order at 185. WorldCom is not arguing for a liquidated damages provision, but rather is arguing for a provision that would include both a liability cap and a broad exception to the liability cap (or, alternatively, no cap at all). The Commission's ruling – that the disputed terms should not be imposed – is ambiguous. The entire liability cap provision is in dispute because WorldCom would not agree to a cap without the proposed exception. If the Commission were simply to strike the exception proposed by WorldCom, while leaving the cap in place, the effect would be to impose the cap without restriction, which WorldCom always has opposed. Because the Commission concluded there was not enough evidence on which to make a decision on this issue, it should rule that all of the liability cap language should be removed, not just the exception proposed by WorldCom.

RESPECTFULLY SUBMITTED this 16th day of April, 2001.



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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 16th day of April, 2001:

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