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October 25, 2001

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Blanca Bayó
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 011177-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services, LLC are the original and fifteen copies each of the rebuttal testimony of Ron Martinez and John Monroe.

By copy of this letter, copies have been furnished to the parties shown on the attached certificate of service. If you have any questions regarding this filing, please give me a call at 425-2313.

Very truly yours,

Richard D. Melson

RDM/mee

Enclosures

cc: Certificate of Service

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the following this 25th day of October, 2001:

Patricia Christensen
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

BY E-MAIL AND HAND DELIVERY

Susan Masterton
Sprint-Florida, Inc.
1313 Blairstone Road
Tallahassee, FL 32301

BY E-MAIL AND U.S. MAIL

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Tallahassee, FL 32301

BY U.S. MAIL



Attorney

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY OF RON MARTINEZ**

3 **ON BEHALF OF MCIMETRO**

4 **DOCKET NO. 011177-TP**

5 **OCTOBER 25, 2001**

6

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

8 A. My name is Ron Martinez. My business address is WorldCom, Inc., 2520
9 Northwinds Parkway, Alpharetta, GA 30004.

10

11 **Q. HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS**
12 **DOCKET?**

13 A. Yes.

14

15 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

16 A. My rebuttal testimony responds to numerous points in the direct testimony of Mr.
17 Clayton and Mr. Hunsucker.

18

19 **Q. IN HIS DIRECT TESTIMONY, MR. CLAYTON STATES THAT YOU**
20 **REPORT TO BRYAN GREEN. IS THAT CORRECT?**

21 A. No, it is not. Sprint's misunderstanding of our organizational structure appears to
22 have caused Sprint confusion in several aspects of this case. Mr. Green and I both
23 report to Marcel Henry, the Vice President of Eastern Telco Line Cost

1 Management. I am responsible for negotiating contracts and amendments with
2 other carriers, such as Sprint, and Mr. Green is responsible for implementing the
3 terms of the contracts.

4
5 **Q. IF MR. GREEN HAS NOTHING TO DO WITH CONTRACT**
6 **AMENDMENTS, WHY DOES MR. CLAYTON INCLUDE IN HIS**
7 **TESTIMONY AN AFFIDAVIT OF WILLIAM CHEEK, DESCRIBING A**
8 **CONVERSATION WITH MR. GREEN AND A BACKDATED LETTER?**

9 A. That is one of the aspects of this case I was referring to where Sprint is confused.
10 Mr. Green's conversation with Mr. Cheek, and the letter from Mr. Green, have
11 nothing to do with this case. They relate to an audit request from Sprint to
12 MCImetro. Because audits have to do with actual performance under the
13 interconnection agreement, that is a matter in Mr. Green's responsibility. Thus,
14 when Sprint requested an audit under the contract, Mr. Green responded to Sprint.
15 When Sprint requested renegotiation of the contract, that was my responsibility. I
16 am attaching to this testimony as Exhibit ___ (RM-9) an affidavit signed by Mr.
17 Green, providing additional details about his communications with Mr. Cheek.

18
19 **Q. MR. CLAYTON MENTIONS THE INTERCONNECTION AGREEMENT**
20 **BETWEEN SPRINT AND MCIMETRO IN NORTH CAROLINA. WHAT**
21 **DOES THAT AGREEMENT HAVE TO DO WITH FLORIDA?**

22 A. Nothing. The only relationship between the two agreements is that they have
23 similar terms, and Sprint has been trying many different devices over the past

1 several months to terminate both agreements. Despite MCImetro's valid renewal
2 of the North Carolina Agreement, Sprint claims that the agreement is terminated.
3 Sprint then attempted to get MCImetro to terminate the Florida agreement by
4 promising to consider extending the service in the North Carolina agreement.

5

6 **Q. WHAT DID YOU MEAN WHEN YOU TOLD MR. CLAYTON YOU**
7 **WOULD SEE HIM IN COURT REGARDING THE NORTH CAROLINA**
8 **AGREEMENT?**

9 A. I meant just that. The parties have a dispute regarding the status of that
10 agreement, so MCImetro is in the process of filing a petition with the North
11 Carolina Utilities Commission to resolve that dispute.

12

13 **Q. MR. CLAYTON SAYS THAT MCIMETRO HAS REFUSED TO**
14 **RENEGOTIATE THE INTERCONNECTION AGREEMENT IN**
15 **FLORIDA. IS THIS TRUE?**

16 A. Yes. MCImetro is under no obligation to renegotiate the entire agreement. Sprint
17 originally sent us a letter listing several items that Sprint believed ought to be
18 amended under the change of law provisions in the contract. Sprint never
19 requested specific amendments, however, because Sprint really does not want to
20 amend the contract. Sprint really wants to terminate the agreement and negotiate
21 an entirely new one. I have told Mr. Clayton on the phone, and I said several
22 times in the letters already in evidence, that although MCImetro does not believe
23 that the change of law provision is properly invoked, MCImetro would consider

1 any amendments that Sprint would like to propose. To date, Sprint still has not
2 proposed a single amendment to the agreement, except for the one in 1998
3 mentioned by Mr. Clayton. Although the parties came to an agreement on the
4 language of that amendment, it was never executed by the parties and filed with
5 the Commission.

6

7 **Q. MR. CLAYTON SAYS THAT YOU TOLD HIM YOU WOULD SET**
8 **ASIDE SOME TIME TO NEGOTIATE CHANGES IN FLORIDA. HAVE**
9 **YOU SET ASIDE TIME FOR FLORIDA?**

10 A. As I stated in my previous answer, I have asked Mr. Clayton several times to
11 propose specific amendments to the Florida agreement. He has never done so.
12 My staff is quite small, and we stay busy, so I do not keep people standing by
13 waiting for Sprint to send us amendments. But, I committed to Sprint that we
14 would consider any amendments that Sprint proposes, and we will honor that
15 commitment. We just don't have any proposals from Sprint.

16

17 **Q. DOES MR. CLAYTON ACCURATELY CHARACTERIZE YOUR**
18 **RESPONSE TO SPRINT'S REQUEST TO RENEGOTIATE?**

19 A. No, he mischaracterizes it in several respects. First, he says Sprint sent a request
20 to negotiate under the change of law provision. Sprint's request cited the change
21 of law provision, but then requested renegotiation of the entire contract. Even
22 assuming the change of law provisions are properly invoked in the first place,

1 those provisions only require amending the contract, not renegotiating it. Thus,
2 Sprint did not request a negotiation under the change of law provision.

3
4 Mr. Clayton also fails to mention that my response was not an outright refusal to
5 negotiate. I refused to renegotiate the entire agreement, but I invited Sprint to
6 propose amendments for any matters it wanted to. (See Exhibit RM-2) Sprint did
7 not respond to this invitation.

8

9 **Q. DOES MR. CLAYTON ACCURATELY CHARACTERIZE YOUR**
10 **RESPONSE TO SPRINT'S NOTICE OF BREACH?**

11 A. No. First, I should mention that I do not believe Sprint sent a "notice" of breach.
12 I believe Mr. Monroe addresses that in his rebuttal testimony. Mr. Clayton says
13 that MCImetro did not respond to the "notice." This is not true. I did write a
14 reply to Sprint's letter. (See Exhibit RM-4) I infer from Sprint's testimony that
15 Sprint did not receive the letter, but that does not alter the fact that MCImetro did
16 reply. Finally, Mr. Clayton cites Mr. Cheek's affidavit, and the telephone
17 conversation between Mr. Cheek and Mr. Green in an apparent attempt to suggest
18 that MCImetro never sent -- or never timely sent -- its June 22, 2001 letter. As I
19 stated earlier in this rebuttal testimony, Mr. Green is not and has not been
20 involved in this case with Sprint. Mr. Green's responsibilities do not include
21 contract negotiations. Mr. Green's conversation with Mr. Cheek was regarding an
22 audit request from Sprint to MCImetro that had nothing to do with this case.

23

1 **Q. MR. CLAYTON MENTIONS MCIMETRO'S INTERCONNECTION**
2 **WITH SPRINT IN NEVADA. HOW IS THAT RELATED TO THIS**
3 **CASE?**

4 A. It has nothing to do with this case. Mr. Clayton mentions a request by MCImetro
5 to opt into an XO Communications interconnection agreement with Sprint in
6 Nevada, MCImetro's withdrawal of that request, and a "reinstatement" of that
7 request by a different WorldCom subsidiary, MCI WorldCom Communications,
8 Inc. It is not clear from Mr. Clayton's testimony what the point of that discussion
9 is, but I see no relationship to this case.

10

11 **Q. WERE MCIMETRO'S WITHDRAWAL OF ITS REQUEST, AND THE**
12 **LATER REQUEST OF MCI WORLDCOM COMMUNICATIONS, INC.**
13 **SOMEHOW RELATED TO THIS CASE?**

14 A. No, not at all. After submitting our initial request, we discovered that the switch
15 being installed in Nevada was owned by a different WorldCom ALEC subsidiary,
16 namely, MCI WorldCom Communications, Inc. It was necessary to make the
17 name change because trunk orders would be submitted to Sprint in Nevada under
18 the name of the switch owner, MCI WorldCom Communications, Inc. We did not
19 want to risk Sprint rejecting those orders on the basis that it did not have an
20 interconnection agreement with MCI WorldCom Communications, Inc., so we
21 withdrew the request and submitted one with the proper name on it.

22

1 **Q. MR. CLAYTON SAYS IN HIS TESTIMONY THAT THE MOST**
2 **EXPEDIENT COURSE OF ACTION TO BRING THE MCIMETRO**
3 **INTERCONNECTION AGREEMENT IN FLORIDA “INTO**
4 **COMPLIANCE WITH CURRENT LAW” IS TO REPLACE THE**
5 **AGREEMENT IN ITS ENTIRETY. DO YOU AGREE?**

6 A. No. Although Sprint cited several sections of the agreement it believes invoke the
7 change of law provision, the agreement contains many, many more provisions
8 that Sprint does not mention. It would take much less time for us to negotiate
9 amendments to the affected sections than to negotiate an entirely new contract.
10 The agreement is a few hundred pages long. Even if the parties were to negotiate
11 new language on all the sections cited by Sprint, such new language likely would
12 not reach even 50 pages.

13
14 **Q. MR. CLAYTON NOTES THAT SPRINT HAS OFFERED MCIMETRO**
15 **SPRINT’S STANDARD INTERCONNECTION AGREEMENT IN**
16 **FLORIDA. WHY IS THIS UNACCEPTABLE TO MCIMETRO?**

17 A. It really is absurd for Mr. Clayton to suggest that MCImetro would accept Sprint’s
18 standard agreement. If standard agreements are acceptable to Sprint, Sprint is
19 welcome to sign MCImetro’s standard agreement. But, the issue of new contracts
20 is really not the point in this case. At most, if Sprint prevails on its claim that the
21 change of law provision is properly invoked, the parties will have to negotiate
22 amendments to the existing agreement, which is exactly what MCImetro has

1 suggested all along. In such a case, however, there still would be no reason to
2 replace the entire agreement.

3

4 **Q. HOW DO YOU RESPOND TO MR. CLAYTON'S SUGGESTION THAT**
5 **THE FLORIDA PUBLIC SERVICE COMMISSION SHOULD ORDER**
6 **MCIMETRO TO OPT INTO THE SPRINT/XO AGREEMENT IN**
7 **FLORIDA?**

8 A. I believe Mr. Monroe's rebuttal addresses the legal aspects of that suggestion, but
9 I am not aware of any basis for a state commission to order an ALEC to terminate
10 an existing interconnection agreement and opt into another ALEC's
11 interconnection agreement.

12

13 **Q. DO YOU HAVE ANY COMMENT ON MR. HUNSUCKER'S**
14 **TESTIMONY THAT THERE IS LIMITED BUSINESS RISK TO**
15 **MCIMETRO BY TERMINATION OF THE EXISTING CONTRACT?**

16 A. Yes, I do. First, Mr. Hunsucker acknowledges that he does not have access to
17 MCImetro's business plans. It is not appropriate for him to have such plans. It is
18 no secret, however, that Florida is a populous state with a sound economy, and
19 MCImetro has announced its intentions to enter the residential market in Florida.

20

21 **Q. IF MCIMETRO HAS NOT YET ENTERED THE RESIDENTIAL**
22 **MARKET, WHY DOES IT NEED A COMPREHENSIVE**
23 **INTERCONNECTION AGREEMENT?**

1 A. It is my experience that the cycle time to obtain an interconnection agreement in
2 Florida takes two years from start to finish. For example, BellSouth and
3 MCImetro recently filed a new interconnection agreement for approval with the
4 Florida Public Service Commission. Negotiations of that agreement began in
5 August of 1999. If we waited until we were ready to provide the service to
6 request an interconnection agreement, service provisioning would be more than
7 two years away. It is imperative that we have interconnection agreements in place
8 before we are ready to provide service. To do otherwise is to delay market entry
9 and to squelch competition.

10

11 **Q. MR. HUNSUCKER REPEATS MR. CLAYTON'S CLAIM THAT THE**
12 **MOST EXPEDIENT COURSE OF ACTION IS TO REPLACE THE**
13 **AGREEMENT WITH A NEW ONE. DOES HE RAISE ANY OTHER**
14 **POINTS TO SUPPORT HIS POSITION?**

15 A. No. He says that Sprint has not provided a complete list of sections that Sprint
16 believes invoke the change of law provision. If that is the case, I can only
17 conclude that Sprint is not interested in amending the sections that are not on its
18 list. Sprint cited several sections of the interconnection agreement that it believes
19 invoke the change of law provision. We do not agree, but we have asked Sprint to
20 propose amendments to those sections. Sprint has neglected to so. The reason for
21 Sprint's repeated failure to propose amendments is that Sprint really does not
22 want to amend the agreement. Sprint wants to terminate the agreement, because it
23 regrets agreeing to let MCImetro renew the contract indefinitely.

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16

Q. DOES MCIMETRO HAVE ANY OTHER FLORIDA AGREEMENTS UNDER WHICH IT IS ENTITLED TO RENEW THE CONTRACT INDEFINITELY?

A. No. The renewal provision in the MCImetro/Sprint agreement is almost identical to MCImetro's "model interconnection agreement" language that we used as a basis to begin negotiations with all ILECs. Other ILECs negotiated changes to MCImetro's standard language but Sprint did not. Sprint should not now be allowed to avoid this or other portions of the agreement that it does not like based on a false claim that the contract was terminated due to a breach by MCImetro.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

**Exhibit ___ (RM-9)
Docket No. 011177-TP**

STATE OF GEORGIA

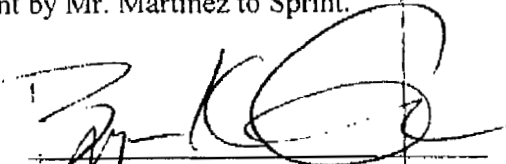
COUNTY OF FULTON

AFFIDAVIT OF BRYAN GREEN

Bryan Green, first being duly sworn, on oath states as follows:

1. That he is the Director – Carrier Management for WorldCom.
2. That he does not recall, nor does he have any record of, Mr. Clayton of Sprint contacting him in April 2000 requesting renegotiation of the interconnection agreement in Florida.
3. That if Mr. Clayton had contacted him as described in Mr. Clayton’s direct testimony in Florida Public Service Commission Docket No. 011177-TP, in his position as Ms. Keys’ successor, he would have referred Mr. Clayton to Mr. Martinez, the individual at WorldCom with responsibility for contract negotiations.
4. That Mr. Clayton sent an email to him on May 10, 2000, but that the purpose of the email was not as described in Mr. Clayton’s testimony referenced above. Rather, that the email was in regards to a customer problem in New Jersey, and that an accurate and complete copy of Mr. Clayton’s email and Mr. Green’s reply are attached as Attachment 1 to this Affidavit.
5. That Mr. Clayton, in his May 10, 2000, email, suggested that Mr. Clayton visit him in Atlanta to discuss various business matters, but that renegotiation of the Florida interconnection agreement was not one of Mr. Clayton’s suggested topics.

- 6. That, contrary to Mr. Clayton's assertion in his testimony that he did not reply to Mr. Clayton's suggestion to meet, he replied via email on the same day of May 10, 2000.
- 7. That he does not recall, nor have any record of, the repeated emails and voicemails Mr. Clayton claims to have sent subsequently.
- 8. That he had a conversation with Mr. Cheek on August 30, 2001, regarding an audit request from Sprint to MCImetro.
- 9. That during said conversation he notified Mr. Cheek that he was not certain if a letter from him to Sprint regarding that audit had been sent.
- 10. That he sent Sprint the audit letter in question, after hanging up with Mr. Cheek, but that he decided to date it with that day's date, August 30, 2001, rather than back date it as discussed with Mr. Cheek.
- 11. That said conversation had nothing to do with Sprint's termination of MCImetro's Florida interconnection agreement.
- 12. That his secretary referenced in the conversation with Mr. Cheek did not support Mr. Martinez, or have any relationship to letters sent by Mr. Martinez to Sprint.


 Bryan Green

Subscribed to and sworn before me by the above-named Bryan Green, personally known to me, on October 25, 2001.


 Notary public

My commission expires Notary Public, Fulton County, Georgia
My Commission Expires April 18, 2003

