

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial Number
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January 29, 2003

BY HAND DELIVERY

Blanca Bayó
Director, Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

030103 JP

Re: MCI Complaint Against BellSouth

Dear Ms. Bayó:

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

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

Please stamp and return the enclosed extra copy of this filing. 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

DOCUMENT NUMBER DATE

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)	
)	
Complaint of MCImetro Access)	Docket No. _____
Transmission Services LLC and)	
MCI WORLDCOM Communications, Inc.)	Filed: January 29, 2003
Against BellSouth for Overcharging for)	
High-Capacity Circuits)	

COMPLAINT

MCImetro Access Transmission Services LLC and MCI WORLDCOM Communications, Inc. (collectively, "MCI") hereby bring this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for breach of the parties' interconnection agreements with respect to the rates charged for certain high-capacity circuits. Despite the clear language of the interconnection agreements entitling MCI to obtain these circuits for unbundled network element ("UNE") or interconnection rates, and (as to Count Three) an order from the Commission requiring BellSouth to charge UNE rates, BellSouth has charged and continues to charge higher special access rates for these circuits. MCI seeks in this action to recover the amount of past charges in excess of UNE or interconnection rates (as applicable) and to require BellSouth to bill UNE or interconnection rates for these circuits going forward. Accordingly, MCI shows the Commission as follows:

PARTIES

1. MCImetro Access Transmission Services LLC ("MCImetro") is a Delaware limited liability company with its principal place of business at 500 Clinton Center Drive, Clinton, Mississippi 39056. MCImetro has a Certificate of Authority issued by the Commission that authorizes MCImetro to provide local exchange service in Florida. MCImetro is a

“telecommunications carrier” and “local exchange carrier” under the Telecommunications Act of 1996 (“Act”).

2. MCI WORLDCOM Communications, Inc. (“MCI WORLDCOM”) is a Delaware corporation with its principal place of business at 500 Clinton Center Drive, Clinton, Mississippi 39056. MCI WORLDCOM has Certificates of Authority issued by the Commission that authorize MCI WORLDCOM to provide local exchange service and long distance service in Florida. MCI WORLDCOM is a “telecommunications carrier” and “local exchange carrier” under the Act. MCI WORLDCOM is the successor-in-interest to WorldCom Technologies, Inc. and MFS Communications Co. with respect to the claims asserted in this Complaint.

3. BellSouth is a Georgia corporation, having offices at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an incumbent local exchange carrier (“ILEC”), as defined in Section 251(h) of the Act, and is a local exchange telecommunications company as defined by Section 364.02(6), Florida Statutes.

4. The persons authorized to receive notices, pleadings and other communications regarding this Complaint are:

Dulaney L. O’Roark III
WorldCom, Inc.
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328

Richard D. Melson
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314

JURISDICTION

5. The Commission has jurisdiction with respect to the claims asserted in this Complaint under Chapters 120 and 364, Florida Statutes; Chapters 25-22 and 28-106, Florida Administrative Code. The Commission also has jurisdiction under the Commission’s Order No. 97-0723-FOF-TP, issued June 19, 1997, and Order No. PSC-01-2238-FOF-TP issued November

16, 2001, in which the Commission approved the MCImetro and MCI WORLDCOM interconnection agreements arbitrated in those dockets, which agreements provided for dispute resolution by the Commission. Moreover, the Commission has jurisdiction to enforce interconnection agreements inherent in its authority under Section 252 of the Act to approve such agreements.

BACKGROUND

A. The Parties' Interconnection Agreements

6. An interconnection agreement between MCImetro and BellSouth was approved by the Commission by Order issued June 19, 1997 ("1997 Agreement"). The 1997 Agreement had a term of three years and remained in effect (subject to true-up) until a follow-on agreement was executed by the parties and approved by the Commission.

7. A partial interconnection agreement between MFS Communications Co. and BellSouth was executed by the parties effective August 26, 1996 ("MFS Agreement"). That agreement remained in effect until WorldCom Technologies, Inc. opted into the 1997 Agreement, except as to Section VIII relating to business process requirements, effective December 1, 1998.

8. Following the arbitration that took place in Docket No. 000649-TP, MCImetro and MCI WORLDCOM executed follow-on interconnection agreements with BellSouth effective September 12, 2001 ("2001 Agreements"). In all material respects, the 2001 Agreements are identical except that one is signed by MCImetro and the other is signed by MCI WORLDCOM. The 2001 Agreements were approved by the Commission by Order issued November 16, 2001.

B. MCI's Attempts to Resolve Its Claims

9. Attachment 8, Section 4.2.12.1 of the 2001 Agreements provides that to commence a billing dispute, the billed party must submit a "notice of discrepancy" to the billing party. On or about April 12, 2002, MCI sent a notice of discrepancy concerning (among other things) the claims raised in this Complaint.

10. After a notice of discrepancy is submitted, the parties have sixty days under the 2001 Agreements to resolve the disputes at the first level of management. 2001 Agreements, Attachment 8, § 4.2.12.4.1. BellSouth responded to the notice of discrepancy on or about May 8, 2002, generally disagreeing with MCI with respect to the claims at issue in this case. MCI and BellSouth were not able to resolve these claims at the first level of management.

11. If the parties are not able to resolve a billing dispute within sixty days, they are required under the 2001 Agreements to escalate the dispute to the next level of management. Attachment 8, § 4.2.12.4.1. Accordingly, MCI sought to escalate its claims to the second level of management on or about May 24, 2002.

12. On or about June 14, 2002, the parties met to discuss the disputes raised in this Complaint. After the issues were discussed, BellSouth promised to review MCI's claims and provide a response. BellSouth has never provided such a response.

13. Under the 2001 Agreements, if a dispute is not resolved by the second level of management within thirty days (*i.e.*, 90 days from the notice of discrepancy), the parties escalate the dispute to the third level of management. 2001 Agreement, Attachment 8, § 4.2.12.4.2. MCI sought to do so on or about July 22, 2002. The parties did not resolve their disputes at the third level of management.

14. If a dispute is not resolved by the third level of management within thirty days (*i.e.*, 120 days from the notice of discrepancy), either party may seek dispute resolution from an appropriate forum. 2001 Agreement, Attachment 8, § 4.2.12.4.3. Because BellSouth has been unwilling to resolve MCI's claims, MCI has been left with no choice but to seek resolution by the Commission.

COUNT ONE

(Breach of Interconnection Agreements With Respect to DS1 Interconnection Trunks)

15. MCI incorporates paragraphs 1-14 of this Complaint as if fully set forth herein.

16. The MFS, 1997 and 2001 Agreements provide that MCI may order DS1 interconnection facilities from BellSouth. MFS Agreement, § 5.2.3; 1997 Agreement, Attachment I, § 7.2; 2001 Agreement, Attachment 4, § 1.5.

17. DS1 interconnection trunks connect MCI switches to BellSouth central offices for the purpose of exchanging traffic between the parties. DS1 interconnection trunks are capable of carrying twenty-four voice grade circuits at one time. Although MCI has been entitled to obtain DS1 interconnection trunks under the MFS, 1997 and 2001 Agreements, BellSouth has refused to bill MCI for these facilities at interconnection rates. Instead, BellSouth has billed, and continues to bill, MCI for these circuits at special access rates from BellSouth's interstate and intrastate access tariffs.

18. When an MCI local customer makes a long distance call that that is processed by MCI's local switch, traverses MCI's interconnection trunk and then traverses BellSouth's network before being handed off to the long distance carrier, MCI and BellSouth are entitled to their proportionate share of the originating local exchange access charges payable by the long distance carrier. Likewise, when an MCI local customer receives a long distance call that is handed off by the long distance carrier to BellSouth and then by BellSouth to MCI for switching

and termination of the call, MCI and BellSouth are entitled to their proportionate share of the terminating local exchange access charges payable by the long distance carrier.

19. BellSouth is not entitled to bill MCI special access rates for local interconnection trunks on the theory that MCI's local customers make local and long distance calls carried over those facilities. MCI is *providing* local exchange access services to long distance companies when long distance calls are made or received by MCI's local customers, not *receiving* special access services from BellSouth. The 2001 Agreements address this situation expressly, stating that "[t]he Parties will establish Meet Point Billing arrangements in order to provide Switched Access Services to third party intraLATA and interLATA toll carriers via BellSouth's Access Tandem Switches, in accordance with MECAB guidelines." 2001 Agreements, Attachment 4, § 9.8.1. The 2001 Agreements further state that "[f]or interstate and intrastate traffic, the Parties will charge third party toll carriers in accordance with each Party's respective Commission or FCC filed and effective Switched Access tariff." *Id.*, Attachment 4, § 9.8.2. The 1997 Agreement has similar requirements. 1997 Agreement, Attachment VIII, § 3.1.25.

20. BellSouth contends that it is entitled to apply special access rates to DS1 interconnection facilities according to the percentage of the facilities not used for local traffic. BellSouth further contends that because MCI has not provided a "Percent Local Facility" figure for traffic carried over the DS1 interconnection facilities, BellSouth is entitled to apply special access rates to 100% of those facilities. BellSouth's contentions contradict the MFS, 1997 and 2001 Agreements, and are inconsistent with BellSouth's tariffs and applicable law.

21. BellSouth's practices of purporting to require MCI to provide a "Percent Local Facility" figure, and of billing DS1 interconnection trunks at special access rates, constitute breaches of the MFS, 1997 and 2001 Agreements. As a result of BellSouth's breaches, MCI has

been required to pay substantially higher prices for DS1 interconnection trunks than the interconnection prices BellSouth is obligated to charge. MCI estimates that through December 2002, MCI has been required to overpay approximately \$5,073,160 for DS1 interconnection trunks in Florida.

22. BellSouth should be ordered to refund all amounts MCI overpaid for DS1 interconnection facilities through the date of BellSouth's compliance with the MFS, 1997 and 2001 Agreements, plus interest, and to bill MCI interconnection rates for DS1 interconnection facilities going forward. The Commission's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Commission if necessary.

COUNT TWO

(Breach of Interconnection Agreements With Respect to DS3 Transport)

23. MCI incorporates paragraphs 1-22 of this Complaint as if fully set forth herein.

24. A DS3 transport facility is a high capacity facility that can carry up to 672 voice circuits, or 28 DS1 trunks. The 1997 and 2001 Agreements provide that MCI may order DS3 transport, and the MFS Agreement likewise permitted the ordering of UNE transport facilities.

25. MCI orders DS3 transport principally for interconnection and to provide the transport portion of a combination of DS1 loop and DS1 transport ("DS1 combo"). Although BellSouth is required to provide DS3 transport to MCI at UNE rates, BellSouth has refused to bill MCI for DS3 transport trunks at the applicable UNE rates. Instead, BellSouth has billed, and continues to bill, MCI for these circuits at rates from BellSouth's interstate and intrastate access tariffs.

26. BellSouth's refusal to bill MCI for DS3 transport at UNE rates constitutes a breach of the MFS, 1997 and 2001 Agreements. As a result of BellSouth's breach, MCI has

been required to pay substantially higher prices for DS3 transport than the UNE prices BellSouth is obligated to charge. MCI estimates that through December 2002, it has been required to overpay approximately \$2,208,105 for DS3 transport in Florida.

27. BellSouth should be ordered to refund all amounts MCI overpaid for DS3 transport through the date of BellSouth's compliance with the MFS, 1997 and 2001 Agreements, plus interest, and to bill MCI for DS3 transport at UNE rates going forward. The Commission's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Commission if necessary.

COUNT THREE

(Breach of Interconnection Agreements With Respect to DS1 Combos)

28. MCI incorporates paragraphs 1-27 of this Complaint as if fully set forth herein.

29. In November 1997, MCImetro requested BellSouth to provision DS1 combos at UNE prices. MCImetro requested the DS1 combo so it could provide a high speed (1.544 mbps) transmission path or loop between a customer's premises and an MCImetro Class 5 local switch. From this local switch, MCImetro provides the customer with dial tone, as well as vertical features, operator services, directory assistance information, emergency 911 services and access to long distance networks.

30. In Docket No. 981121-TP, the Commission ruled in its Order No. PSC-99-1089-FOF-TP issued May 27, 1999 that MCImetro was entitled to order DS1 combos at UNE rates under the 1997 Interconnection Agreement. Pursuant to the Commission's Order, BellSouth revised its records to reflect that most of the circuits in question ordered by MCImetro from November 1997 through October 1999 were in fact DS1 combo circuits and provided a credit for the amount of the overpayment.

31. Since October 1999, BellSouth has refused to provision MCI's DS1 combo orders as DS1 combo circuits, but rather has provisioned them as special access circuits and has charged MCI the higher special access rates for those circuits. BellSouth has purported to justify its actions on the ground that MCI ordered these circuits using the ASR process rather than BellSouth's manual LSR process. BellSouth's purported justification is groundless, because MCI was entitled to order DS1 combo circuits using the ASR process under the 1997 Agreement.

32. BellSouth's refusal to bill MCI for some of the DS1 combos ordered before November 1999 and all of the DS1 combos ordered from November 1999 to September 11, 2001 at UNE rates constitutes a breach of the 1997 Agreement and Commission's Order in Docket No. 981121-TP. As a result of BellSouth's breach, MCI has been required to pay substantially higher prices for DS1 combos than the UNE prices BellSouth is obligated to charge. MCI estimates that it has been required to overpay approximately \$3,074,973 for these circuits through December 2002.

33. BellSouth should be ordered to refund all amounts MCI has overpaid through the date of BellSouth's compliance with the 1997 Agreement and the Order in Docket No. 981121-TP, plus interest, for the DS1 combos MCI ordered through September 11, 2001 that BellSouth has not billed at the DS1 combo rate. The Commission's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Commission if necessary.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, MCI respectfully requests that the Commission:

(1) On Count One, order BellSouth to provide MCI with a credit equal to the difference between (i) the special access price BellSouth charged MCI for DS1 interconnection trunks, and (ii) the price BellSouth should have charged for DS1 interconnection trunks under the MFS, 1997 and 2001 Agreements, through the date of BellSouth's compliance with the MFS, 1997 and 2001 Agreements, plus interest;

(2) On Count One, order BellSouth to charge MCI the interconnection rates specified in the 2001 Agreements on all existing DS1 interconnection trunks going forward and to provision all future requests by MCI for DS1 interconnection trunks under the 2001 Agreements at the interconnection rates specified therein;

(3) On Count Two, order BellSouth to provide MCI with a credit equal to the difference between (i) the special access price BellSouth charged MCI for DS3 transport, and (ii) the price BellSouth should have charged for DS3 transport under the MFS, 1997 and 2001 Agreements, through the date of BellSouth's compliance with the MFS, 1997 and 2001 Agreements, plus interest;

(4) On Count Two, order BellSouth to charge MCI the UNE rates specified in the 2001 Agreements on all DS3 transport going forward and to provision all future requests by MCI for DS3 transport under the 2001 Agreements at the UNE rates specified therein;

(5) On Count Three, order BellSouth to provide MCI with a credit equal to the difference between (i) the access price BellSouth charged MCI for DS1 combos, and (ii) the price BellSouth should have charged for DS1 combos under the 1997 Agreement and the Commission's Order in Docket No. 981121-TP, through the date of BellSouth's compliance with the 1997 Agreement, for the DS1 combos MCI ordered through September 11, 2001 that BellSouth has not billed at the DS1 combo rate, plus interest;

(6) On Count Three, order BellSouth going forward to charge MCI the applicable UNE rates on all DS1 combos ordered through September 11, 2001 that BellSouth has not billed at the DS1 combo rate; and

(7) Order such further relief as the Commission deems just and appropriate.

RESPECTFULLY SUBMITTED this 29th day of January, 2003.

HOPPING GREEN & SAMS, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Complaint was served by hand delivery this 29th day of January, 2003, on the following:

Nancy B. White
c/o Nancy H. Sims
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