

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)
)
Petition of MCImetro Access)
Transmission Services, LLC for)
Arbitration of Interconnection)
Agreement with BellSouth)
Telecommunications, Inc.)
_____)

Docket No. 050419-TP

DIRECT TESTIMONY OF MICHAEL J. LEHMKUHL

On Behalf of

**MCImetro Access Transmission Services LLC
(MCI)**

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1 **Q. PLEASE STATE YOUR NAME AND YOUR EMPLOYER.**

2 A. My name is Michael J. Lehmkuhl. I am employed by MCI Communications,
3 Inc. (the parent company of MCImetro Access Transmission Services, LLC
4 (“MCI”)) as a Senior Regulatory Specialist for Directory Assistance and
5 Operator Services. My current business address is 22001 Loudoun County
6 Parkway, Ashburn, Virginia 20147.

7 **Q. BRIEFLY DESCRIBE YOUR BACKGROUND AND RELEVANT**
8 **EXPERIENCE.**

9 A. I have been an employee of MCI for five years in the area of Directory
10 Assistance of Operator Services. Before joining MCI, I practiced
11 telecommunications law before various federal agencies, including the Federal
12 Communications Commission (FCC) for approximately ten years. I earned a
13 Juris Doctorate and Master of Arts in Mass Communications from Drake
14 University Law School in 1990. I earned my Bachelor’s Degree in Journalism
15 from the University of Wisconsin at Madison in 1987. My responsibilities at
16 MCI include supporting the business and regulatory efforts of MCI through its
17 Enhanced Services Group. During my time at MCI I have been involved with
18 advocating MCI’s position at various state commission hearings and
19 interconnection agreement arbitrations and cost proceedings.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. The purpose of my testimony is to support MCI's position regarding
2 nondiscriminatory access to BellSouth's Directory Assistance Data Service
3 ("DADS").

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5
6 *Should BellSouth provide a download with daily updates to the directory assistance*
7 *database (DADS) to MCI, at a nondiscriminatory price?*
8

9
10 **Q. WHAT ARE BELLSOUTH'S OBLIGATIONS TO MCI WITH REGARD**
11 **TO DIRECTORY ASSISTANCE ("DA") LISTINGS?**

12 A. Pursuant to 47 USC § 251(b)(3) of the Telecommunications Act of 1996, LECs
13 are obligated to provide other carriers nondiscriminatory access to their
14 directory assistance listings. That section requires LECs to provide
15 nondiscriminatory access to Directory Assistance ("DA") databases to
16 competing DA providers that provide telephone exchange service or telephone
17 toll service.

18 Section 51.217(a) of the FCC rules further elaborates:

19 (2) "Nondiscriminatory access" refers to access to telephone
20 numbers, operator services, directory assistance and directory
21 listings that is **at least equal to the access that the providing**
22 **local exchange carrier (LEC) itself receives.**
23 Nondiscriminatory access includes, but is not limited to:

24 (i) **Nondiscrimination between and among carriers in the**
25 **rates, terms, and conditions of the access provided;** and

26 (ii) The ability of the competing provider to obtain access that
27 is at least equal in quality to that of the providing LEC.

28 (3) Providing local exchange carrier (LEC). A "providing
29 local exchange carrier" is a local exchange carrier (LEC) that is
30 required to permit nondiscriminatory access to a competing
31 provider.
32

1 (Emphasis added.)

2 **Q. CAN YOU EXPLAIN WHAT “NONDISCRIMINATORY**
3 **ACCESS” MEANS?**

4 A. Yes. Because of the monopoly control LECs have over the DA listings of their
5 subscribers, LECs are required to provide access to these listings to other
6 requesting carriers in a way that does not favor one carrier over another.
7 Because carriers are competing in the same directory assistance services market
8 as the providing LEC, the providing LEC may not favor itself over any carrier
9 any more than it may favor one carrier over another. As the FCC stated in its
10 1999 SLI/DA order, any standard that would allow a LEC to provide access to
11 any competitor that is inferior to that enjoyed by the LEC itself is inconsistent
12 with Congress’s objective of establishing competition in all telecommunications
13 markets.¹

14 In its 2001 DAL Provisioning Order, the FCC explained that:

15 Because incumbent LECs derive their local directory assistance
16 database through their service order processes, they continue to
17 maintain a near total control over the vast majority of local
18 directory listings that form a necessary input to the competitive
19 provision of directory assistance. Without nondiscriminatory
20 access to the incumbents’ directory assistance databases,
21 competing DA providers may be unable to offer a competitive
22 directory assistance product. This, in turn, may affect the ability

¹ See, *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket Nos. 96-115, 96-98, and 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking (rel. September 9, 1999), ¶ 129.

1 of both the DA providers and the CLECs that rely on them to
2 compete in the local exchange marketplace.²
3

4 On this basis, the FCC concluded that providing LECs could not impose
5 restrictions on other carriers that they themselves were not subject. The FCC
6 reaffirmed this decision when it denied BellSouth's Petition for Reconsideration
7 seeking to impose restrictions on other LECs' use of DA listings:

8 As the Commission already concluded, section 251(b)(3)
9 expressly mandates nondiscriminatory access to directory
10 assistance and, in this context, "nondiscriminatory access" means
11 that providing LECs must offer access equal to that which they
12 provide themselves.³
13
14

15 **Q. BELLSOUTH CLAIMS THAT ITS RATES FOR ITS DADS PRODUCT**
16 **ARE NONDISCRIMINATORY BECAUSE BELLSOUTH OFFERS THE**
17 **SAME RATE TO ALL LECS THAT BUY DADS. ISN'T THAT**
18 **NONDISCRIMINATORY?**

19 A. No. Because LECs like BellSouth have near total control over the DA listings
20 in their territories, the rates for those listings must be nondiscriminatory as well.
21 It is not enough that a LEC offers the same rate to other carriers when it has
22 access to those listings at a much lower cost than the other carriers. Such a
23 situation allows LECs to discriminate between themselves and all other carriers.

24 While BellSouth currently offers a tariffed rate of \$.04 for directory listings to

² FCC First Report and Order, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC-Docket No. 99-273, FCC 01-27 (Adopted January 23, 2001) ("*DAL Provisioning Order*"), at ¶3.

³ FCC Order on Reconsideration, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket 99-273, FCC 05-93 (adopted May 3, 2005) ("*DAL Order on Reconsideration*"), citing *SLI/DA Order on Reconsideration and Notice*, 14 FCC Rcd 15550, 15618, para. 128.

1 all other carriers, based on cost-based rates established in other states, this is a
2 much higher rate than carriers like BellSouth pay for their own DA listings. I
3 am aware that it generally costs a LEC fractions of a cent per listing, especially
4 when it has as many subscribers and has consolidated its operations over its
5 operating region such as has BellSouth. To be nondiscriminatory as between
6 itself and other LECs, BellSouth's rate must be more closely aligned with what
7 it costs BellSouth to generate DA listings.

8 **Q. HAS ANY STATE RECENTLY SET NONDISCRIMINATORY COST-**
9 **BASED RATES FOR DA LISTINGS BASED ON 251(b)(3)?**

10 A. Yes. The California PUC ("CPUC") determined that cost-based rates were
11 necessary to achieve nondiscriminatory access and recently required SBC to
12 offer its DA listing at cost-based rates. In that case, SBC claimed that the
13 \$0.0585 per listing rate it charged for DA listings was appropriate since it
14 charged all carriers the same market-based rate.

15 The CPUC rejected SBC's argument that its rates were appropriate based
16 on the nondiscriminatory access requirement of 251(b)(3) and the monopoly
17 power SBC could exercise over access to its subscriber's DA listings. The
18 CPUC required SBC to file a cost study and determined that it was reasonable to
19 apply a forward-looking economic cost methodology (TELRIC) despite the fact
20 that DA listings are not considered a UNE.

21 **Q. WHAT WAS THE BASIS FOR THE CALIFORNIA PUC'S DECISION?**

22 A. In that proceeding, the California PUC stated:

1 SBC may not use its market power to extract excessive DALIS
2 [directory assistance listing information service] prices at a level that
3 would unfairly discriminate against competitors. In this respect, the
4 [California] Commission has previously stated in D.01-09-054:
5

6 Even if [Directory Assistance Listing] DAL is not a UNE, pricing
7 of DAL is subject to strict nondiscrimination requirements under
8 the Act and FCC orders. As the FCC recognized in its DAL
9 Provisioning Order, this nondiscriminatory access requirement
10 extends to pricing.

11 In its order, the FCC recognized that ILECs continue to
12 charge competing DA providers discriminatory and unreasonable
13 rates for DAL. Although the FCC declined to support a specific
14 pricing structure for DAL, it encouraged states to set their own
15 rates consistent with the nondiscrimination and reasonable
16 pricing requirements of Section 251(b)(3). *(footnote omitted)*
17

18 Given that we find no basis to conclude that the California wholesale
19 market for DALIS is fully competitive, we cannot simply assume the
20 prices charged by SBC affiliates in other jurisdictions are a reasonable
21 proxy of competitive market prices for DALIS in California.
22

23 We recognize that DALIS is not recognized as a UNE under FCC rules.
24 nonetheless, nothing in the FCC rules preclude this Commission from
25 exercising discretion to apply a forward-looking pricing approach to
26 satisfy the “nondiscriminatory” pricing standard required for DALIS.⁴
27

28 **Q. IS THE MARKET FOR DA LISTINGS COMPETITIVE IN FLORIDA**
29 **OR IN BELLSOUTH’S TERRITORY?**

30 A. No. It has been long recognized that ILECs such as BellSouth have “access to a
31 more complete, accurate and reliable database than its competitors.”⁵ BellSouth
32 has more direct and complete access to DA data than any potential competitor

⁴ *Opinion Adopting Wholesale Directory Assistance Listing Prices*, California Public Utilities Commission Decision 04-05-020, May 6, 2004, at p. 15.

⁵ FCC Memorandum Opinion and Order, *In the Matter of the Petition of BellSouth for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services, et al.*, CC Docket No. 97-172, DA 00-514, adopted April 11, 2000 (“FCC Forbearance Order”) at ¶ 15, note 42, adopting the conclusions of the FCC’s *US West NDA Forbearance Order*.

1 currently possesses or will possess for the foreseeable future. Carriers like MCI
2 cannot provide DA services without the underlying DA listings. While there
3 may be different companies providing DA services, BellSouth is the only source
4 for accurate and complete DA listings in its operating territory.⁶ As I stated
5 above, the FCC concluded that, “because incumbent LECs derive their local DA
6 database through their service order processes, they continue to maintain a near
7 total control over the vast majority of local directory listings that form a
8 necessary input to the competitive provision of directory assistance.”⁷

9 **Q. IS IT APPROPRIATE FOR BELL SOUTH TO FILE A COST-STUDY IN**
10 **THIS CASE?**

11 A. Yes. BellSouth provides DADS as a wholesale product to direct competitors
12 under conditions that give BellSouth both the incentive and the ability (absent
13 regulatory controls) to gain an unfair competitive advantage. It is not enough
14 for BellSouth to simply charge other competitors the same rate if BellSouth is
15 paying a much lower rate. And while BellSouth has filed cost studies in the
16 past, it is not clear whether that information is current or reflects the economies
17 of scale currently enjoyed by BellSouth.

18 Instead, the best way to ensure that BellSouth does not discriminate
19 between its operations and its competitors’ operations is to ensure that DA
20 listings are available to competitors at cost-based rates. Forward-looking

⁶ See, FCC Memorandum Opinion and Order, In the Matter of Bell Operating Companies Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220, adopted February 6, 1998, at ¶ 82-83.

⁷ *DAL Provisioning Order* at ¶ 3; see also, *DAL Order on Reconsideration* at ¶ 16 where the FCC rejected BellSouth’s argument that the local directory assistance listings market is competitive.

1 economic cost establishes an economically meaningful benchmark for
2 nondiscrimination that promotes fair competition and prevents BellSouth from
3 exploiting its legacy monopoly power over this critical input.

4 **Q. HAS BELLSOUTH FILED A COST STUDY IN THIS PROCEEDING?**

5 A. No. BellSouth has not provided or filed in this proceeding a cost study for DA
6 listings. If BellSouth wants to charge CLECs such as MCI for DA listings, the
7 Commission should require BellSouth to file such a cost study so that it can set
8 nondiscriminatory cost-based rates.

9 **Q. DOES THIS COMMISSION HAVE AUTHORITY TO SET A COST-
10 BASED RATE FOR DA LISTINGS?**

11 A. Yes. In the FCC's 2001 *DAL Provisioning Order*, the FCC declined to adopt a
12 specific rate methodology but confirmed that the states could set rates for DA
13 listings subject to 251(b)(3) and the FCC's other Title II requirements.⁸ As an
14 example, the FCC cited a cost-based rate developed by the New York PSC for
15 DA Listings.⁹

16 **Q. DO OTHER STATES CURRENTLY REQUIRE COST-BASED RATES
17 FOR DA LISTINGS?**

18 A. Yes. In those states that have required ILECs to charge rates based on valid cost
19 studies for DA listings, those rates range anywhere from between \$0.00141 to
20 \$0.0186 per listing, which is far below the \$0.04 per listing BellSouth proposes

⁸ *DAL Provisioning Order* at ¶ 35.

⁹ *DAL Provisioning Order* at ¶ 38, note 99. The New York PSC rate is included below.

1 here. Below is a table showing some of the states that have adopted cost-based
2 pricing for DA listings:

State	ILEC	Rate per Listing Initial Load	Rate per Listing Daily Update
Minnesota ¹⁰	Qwest	\$0.0083	\$0.0186
New York ¹¹	Verizon	\$0.0014	\$0.0051
Texas ¹²	SBC	\$0.00011	\$0.00141
Washington ¹³	Qwest	\$0.0073	\$0.0171

3

4 **Q. ASIDE FROM CALIFORNIA, WEREN'T THESE COST-BASED RATES**
5 **DETERMINED USING THE FCC'S UNE RULES?**

6 A. Yes. These rates, however, are based on valid cost studies which provide a good
7 starting point for determining nondiscriminatory rates for DA Listings under
8 251(b)(3). The best means to ensure that BellSouth does not discriminate
9 between its operations and its competitors' operations is to ensure that DA
10 listings are available to competitors at rates that are more closely aligned with
11 what it costs BellSouth to generate DA listings. Forward-looking economic
12 cost, unlike transfer pricing to affiliates, establishes an economically meaningful

¹⁰ Minnesota Public Utilities Commission, *In the Matter of the Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, Docket No. P-421/CI-01-1375.

¹¹ See, *New York Verizon Tariff #916*, issued pursuant to NYPSC Order No. 98-C-1 357 (February 8, 2000). Under the New York tariff, listings are offered for a lump sum amount per month. Initial full extract via electronic file transfer, non-recurring is \$13,464. Daily updates are \$3,637 per month. Stated on a per record basis, this would equate to a full initial transfer of approximately \$0.0014 per listing and a daily update rate of \$0.0051 per listing based on a base file of 9,900,000 listings and an average monthly update of 713,000 records.

¹² See, *Texas 1998-2000, Directory Assistance Listing Cost Study, Total Element Long Run Incremental Cost Study, Form 2*; cited in, *MCI Texas Arbitration Award*, Docket 19075, at pages 12-14 (1998).

¹³ Washington Utilities and Transportation Commission, *In the Matter of the Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination*, DOCKET NO. UT-003013 (December 20, 2002).

1 benchmark for nondiscrimination that promotes fair competition and prevents
2 BellSouth from exploiting its legacy monopoly power over this critical input

3 In describing the TELRIC methodology under the FCC's UNE rules, the
4 FCC noted that, "[a]s a result of the availability to competitors of the incumbent
5 LEC's unbundled elements at their economic cost, consumers will be able to
6 *reap the benefits of the incumbent LECs' economies of scale and scope*, as well
7 as the benefits of competition."¹⁴ As the California PUC recognized,
8 application of TELRIC permits precisely that it makes directory listing services
9 available to competitors at a price that will enable the final consumers of such
10 listings to obtain the information from other competitors while still being able to
11 benefit from BellSouth's economies of scale and scope in obtaining directory
12 listings.

13 **Q. WHAT ABOUT THE TEXAS RATE?**

14 A. While the Texas Commission previously set UNE rates for directory listings, it
15 ruled subsequently that because Southwestern Bell was able to use its sizable
16 database from other states to provide Texas customers a Nationwide Listing
17 Service, CLECs and interexchange carriers were unfairly discriminated against
18 unless they had access to Southwestern Bell's end-user subscriber listings in
19 Texas at cost-based rates. The Commission made this ruling outside of the

¹⁴ *Local Competition Order ¶ 679.*

1 UNE requirements of the Act and, it is MCI's understanding that none of the
2 circumstances cited in that Order have changed.¹⁵

3 **Q. WHEN ESTABLISHING RATES, TERMS, AND CONDITIONS FOR DA**
4 **LISTINGS, WHAT IS THE DIFFERENCE BETWEEN APPLYING THE**
5 **UNE RULES AND THE NONDISCRIMINATORY STANDARD IN**
6 **251(b)(3)?**

7 A. The nondiscriminatory access rules of 251(b)(3) apply to *all* LECS—BellSouth,
8 MCI and other LECs alike. While many states and carriers (including MCI)
9 once advocated treating DA Listings as UNEs, the FCC's UNE Remand Order
10 and the more recent DAL Provisioning Order has made clear that the
11 nondiscriminatory access provisions of Section 251(b)(3) apply to the rates
12 terms and conditions appropriate to DA Listings. Nevertheless, the results under
13 either analysis should be the same or similar.

14 **Q. WHAT RATE HAS MCI PROPOSED?**

15 A. MCI has proposed a rate of \$0.001 per listing. This rate is based on an approved
16 cost-based rate MCI once paid for the listings in Florida. It was set by the
17 Commission based on an approved cost study submitted by BellSouth in
18 conjunction with a cost proceeding under the Act.¹⁶ The original rate also
19 included a \$100 monthly recurring charge which was inadvertently omitted from
20 MCI's proposal in this proceeding.

¹⁵ *Application Of Southwestern Bell Telephone Company To Introduce A New Optional Service, Nationwide Listing Service, Pursuant To Subst. R. § 23.25, Docket No. 19461, SOAH Docket No. 473-98-1457 (1999).*

¹⁶ Order No. PSC-96-1579-FOF-TP, issued December 31, 1996, in FPSC Dockets No. 960833-TP, 960846-TP, and 960916-TP.

1 **Q. WHY IS THIS RATE APPROPRIATE?**

2 A. The rate was part of a cost-based proceeding involving BellSouth and is
3 consistent with cost-based rates established by other Commissions.

4 Because MCI can only estimate a cost-based rate in the absence of a
5 recent valid cost study, MCI proposes the Commission establish MCI's
6 proposed rate on an interim basis until it sets nondiscriminatory cost-based rates
7 DA listings. MCI's proposed rate is more a starting point in this proceeding,
8 rather than what MCI believes to be the true rate.

9 The old Florida rate is not perfect. For example, it is based on a Total
10 Service Long Run Incremental Cost ("TSLRIC") model rather than a Total
11 Element Long Run Incremental Cost ("TELRIC"). TSLRIC actually measures
12 the costs of BellSouth providing a listing service to other LECS rather than the
13 costs of the DA listings to BellSouth and other LECs.¹⁷ Accordingly, one would
14 expect that a TSLRIC rate would be higher than what it would cost BellSouth
15 for the listings. Nevertheless, based on the rates I have cited above, the rate
16 MCI proposes is not inconceivable.

17 **Q. ISN'T IT POSSIBLE THAT BELLSOUTH'S COSTS ARE HIGHER**
18 **THAN THE COST-BASED RATES YOU HAVE CITED?**

19 A. It is possible, but not likely. While I haven't seen a recent BellSouth cost-study
20 on DA listings, based on my knowledge of pricing from various LECs around

¹⁷ See, *MCI Telecommunications Corporation, et al., v. BellSouth Telecommunications, Inc.*, 112 F. Supp. 2d 1286 (2000). The court invalidated the TSLRIC rates as contrary to the FCC's UNE Rules. MCI notes that 251(b)(3) does not require a state commission to use TELRIC, however, a state commission would have the discretion to use it as did the California PUC.

1 the country, \$0.04 per listing is about the average only for those states that allow
2 “market-based” pricing and have yet to adopt cost-based nondiscriminatory
3 pricing for DA listings.

4 **Q. WHY IS “MARKET-BASED” PRICING FOR DA LISTINGS**
5 **INAPPROPRIATE?**

6 A. Because, as I have explained, there is no market for a LEC’s directory listings.
7 BellSouth, like other LECs, essentially has a monopoly on the DA listings
8 throughout region, and there really is no market upon which to base a price.

9 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

10 A. Yes.