ORIGINAL

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December 1, 2005

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 050419-TP
In Re: Petition of MCImetro Access Transmission Services, LLC For Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Shelley L. Decker, Eric Fogle, Eddie L. Owens, W. Bernard Shell and Pam Tipton, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III /RN
James Meza III

CMP ____
COM 2
CTR ____
ECR ____
GCL 1 Enclosures
OPC ____
RCA ____
SCR ____
SGA ____
SEC 1 606846
OTH ____

cc: All parties of record
Jerry D. Hendrix
Nancy B. White
R. Douglas Lackey

FOGLE – 11362-05
OWENS – 11363-05
SHELL – 11364-05
TIPTON – 11365-05
DECKER – 11368-05 REDACTED - Pg 3
11369-05 REDACTED - No Pg 3

CERTIFICATE OF SERVICE
DOCKET NO. 050419-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express and Electronic Mail Mail this 1st day of December, 2005 to the following:

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BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ERIC FOGLE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050419-TP

DECEMBER 1, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director, working with BellSouth's Interconnection Marketing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony on October 21, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to provide BellSouth's response to the direct testimony of MCI Witness Greg Darnell, and make sure that the Florida Public Service Commission ("Commission") has a clear understanding of BellSouth's positions on Issue 3.

Issue 3: What rates, terms, and conditions for the disputed rate elements in Attachment 2 should be incorporated into the Agreement?

Q. WITH RESPECT TO MR. DARNELL'S TESTIMONY ON ISSUE 3, WHAT PORTION ARE YOU REBUTTING?

A. First, I will address Mr. Darnell's assumption that High-bit rate Digital Subscriber Line ("HDSL") capable loops should not have been included in the rate changes authorized by the Federal Communications Commission ("FCC"). Second, I will rebut Mr. Darnell's erroneous theory as to why BellSouth's position should be rejected.

Q. PRIOR TO ADDRESSING MR. DARNELL'S TESTIMONY, CAN YOU PLEASE DESCRIBE TO WHAT THIS DISPUTE RELATES?

A. Yes. This issue is a simple rate dispute regarding whether the Attachment 2 rate sheet should provide that HDSL-capable loops in unimpaired wire centers are subject to the rate changes associated with the FCC's findings in FCC 04-290, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("*TRRO*"). It is BellSouth's position that these rate changes apply to HDSL-capable loops during the transition period established in the *TRRO* ("March 11, 2005 to March 10, 2006) ("Transition Period"). MCI disagrees. As I will explain in further detail below, the parties have already agreed to such treatment in the text of Attachment 2 of the Agreement; nevertheless, MCI continues to object to this treatment in the context of the rate sheet.

Q. IS MR. DARNELL CORRECT IN ASSERTING THAT HDSL-CAPABLE LOOPS SHOULD NOT BE SUBJECT TO THE FCC'S PRICING REGIME FOR THE TRANSITION PERIOD?

A. No. The *TRRO* establishes that the rates for high-capacity loops (DS1s and DS3s) in unimpaired wire centers increase by 115% during the Transition Period. *TRRO* at ¶ 5. By definition, the FCC has equated HDSL-capable loops to DS1s. Specifically, FCC Rule 51.319(a)(4)(i) defines a high capacity or DS1 loop as a "digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services." Thus, the FCC has expressly included HDSL loops in the definition of DS1 loops and there should be no question that HDSL-capable loops are subject to the FCC-ordered rates in unimpaired wire centers during the Transition Period.

Q. HAVE THE PARTIES AGREED TO A DEFINITION OF DS1s THAT INCLUDES HDSL-CAPABLE LOOPS?

A. Yes. The parties have already agreed to include HDSL-capable loops in the definition of DS1s in the Agreement. In particular, Section 2.3.6.1 of Attachment 2 is not in dispute and states: "For purposes of this Agreement, including the transition of DS1 and DS3 Loops described in Section 2.1.7 above, DS1 loops include 2-wire and 4-wire copper Loops capable of providing high-bit rate digital subscriber line services, such as 2-wire and 4-

wire HDSL Compatible Loops." Section 2.1.7 of Attachment 2 contains the process for the "Transition of Non-impaired DS1 and DS3 Loop". Thus, the parties have already agreed that (1) HDSL-capable loops are considered DS1s; and (2) HDSL-capable loops are subject to the *TRRO's* Transition Period.

Given this express agreement in Attachment 2 as to how the parties define and will treat HDSL-capable loops, it is unclear why MCI refuses to agree in the rate sheet that HDSL-capable loops in unimpaired wire centers are subject to the 115% price increase established by the *TRRO*.[1] Simply put, MCI agrees with BellSouth's position in Attachment 2, but then attempts to dispute it in the context of the rate sheet. BellSouth submits that MCI's agreement in the text of Attachment 2, in conjunction with the FCC's Rules, is dispositive of this issue and MCI should not be allowed to circumvent already agreed-upon language by collaterally raising disputes in a rate sheet.

Q. IS THERE ANY DIFFERENCE BETWEEN THE HDSL-CAPABLE LOOP DEFINITION IN THE FCC'S RULES AND THE DEFINITION OF AN HDSL-COMPATIBLE LOOP AGREED TO THE BY THE PARTIES?

A. No, the two terms are synonymous.

Q: PLEASE COMMENT ON MR DARNELL'S CHARACTERIZATION IN HIS DIRECT TESTIMONY (PAGE 25, LINES 1-5) THAT BELLSOUTH'S

[1] Section 2.1.7.7 of Attachment 2 provides that "Notwithstanding the Effective Date of this Agreement, during the Transition Period, the rates for MCI's Embedded Base of DS1 and DS3 Loops and MCI's Excess DS1 and DS3 Loops described in this Section 2.1.7 shall be as set forth in Exhibit B."

INCLUSION OF HDSL-CAPABLE LOOPS IN THE TRANSITION PLAN IS "DISINGENUOUS".

A. Relying on an *ex-parte* letter BellSouth filed with the FCC prior to the *TRRO* on December 8, 2004, Mr. Darnell claims that it is "disingenuous" for BellSouth to assert that HDSL-capable loops should be subject to the pricing regime governing the Transition Period for high-capacity loops. Regardless of what BellSouth stated in this *ex-parte*, the FCC rejected BellSouth's assertions because its rules following the *TRRO* reaffirmed that DS1s include HDSL-capable loops. Specifically, following BellSouth's *ex-parte*, the FCC amended Rule 51.319(a)(4)(i) in the *TRRO* to read:

> Subject to the cap described in paragraph (a)(4)(ii), an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. Once a wire center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that wire center. ***A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber' line services, including T1 services*** (emphasis added).

Further, the FCC amended its rules in the *TRRO* to expressly provide that existing DS1 loop rates in unimpaired wire centers will be 115% of the existing loop rate for the duration of the Transition Period, and Competitive Local Exchange Carriers ("CLECs") cannot obtain new DS1 loops as

Unbundled Network Elements ("UNEs") in unimpaired wire centers. *See* 47 C.F.R. § 51.319(a)(4)(iii). Thus, the FCC made it expressly clear in the *TRRO* that HDSL-compatible loops are DS1s and should be treated as such during the Transition Period, regardless of what BellSouth may have said in an *ex-parte* letter to the FCC that predates the *TRRO*.[2]

Q. IS THERE AN ADDITIONAL REASON WHY THE COMMISSION SHOULD DISREGARD MR. DARNELL'S ARGUMENT REGARDING BELLSOUTH'S EX-PARTE FILING?

A. Yes. In his testimony, Mr. Darnell refuses to recognize that the parties have already agreed in Attachment 2 that HDSL-capable loops are DS1s. Thus, even if the FCC's rules in the *TRRO* did not support BellSouth's position (which it does), the parties have already agreed otherwise.

Q. CAN YOU ALSO COMMENT ON MR. DARNELL'S ASSERTION (PAGE 23) THAT BELLSOUTH'S DESCRIPTION OF AN HDSL-CAPABLE LOOP IN THE FLORIDA COMMISSION'S 1999 UNE DOCKET SOMEHOW UNDERMINES ITS POSITION HERE?

A. Yes. In the docket to which Mr. Darnell refers, BellSouth offered the following on HDSL-capable loops in 2000:

[2] The fact that MCI focuses on BellSouth's *ex-parte* letter to support its position, while incorrect, further proves that the terms "HDSL-capable" and "HDSL-compatible" loops are synonymous. This is so because BellSouth used the term "HDSL-compatible" loops in its *ex-parte*. *See TRRO* at ¶ 163, n. 454.

> High Bit-Rate Digital Subscriber Line (HDSL) Compatible Loop: The 2- and 4-wire copper loops are best suited for HDSL services. The technical characteristics of a loop are screened to ensure that the loop meets stringent industry standards for Carrier Serving Area ("CSA") transmission specifications to support HDSL services. The strict requirements for these loops mean that the end user must be served by a non-loaded copper pair, and the loop typically cannot be more than 12,000 feet long on 24 gauge copper wire. If 26 gauge copper wire is used, the limit is 9,000 feet or less. In either case, the loop may have up to 2,500 feet of bridged tap with no single bridged tap exceeding 2,000 feet. (Investigation into Pricing of Unbundled Network Elements, BellSouth Telecommunications, Inc.'s Post-Hearing Brief, Docket No. 990649-TP, Filed November 21, 2000, Page 26.)

BellSouth is unclear as to why Mr. Darnell believes that the above definition somehow supports MCI's position. Contrary to Mr. Darnell's apparent beliefs, nothing in this technical explanation of an HDSL-capable loop undermines the FCC's subsequent inclusion of HDSL-capable loops as DS1s in the *TRO* and *TRRO*. The above description only explains at a high level the technical requirements of the loop necessary to use HDSL technology and in no way undermines or contravenes the FCC's express findings that HDSL-capable loops are considered DS1s.

Q. CAN YOU ALSO COMMENT ON MR. DARNELL'S ASSERTION ON PAGE 24 OF HIS TESTIMONY THAT AN HDSL-CAPABLE LOOP IS COMPARABLE TO A DARK FIBER LOOP?

A. Yes. Mr. Darnell states that a dark fiber loop is not an HDSL-capable loop. BellSouth agrees. However, this conclusion does not negate the fact that an

HDSL-capable loop is a DS1, as found by the FCC and agreed to by the parties.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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