

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petitions by AT&T)
 Communications of the Southern)
 States, Inc., MCI)
 Telecommunications Corporation,)
 MCI Metro Access Transmission)
 Services, Inc., American)
 Communications Services, 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. 960833-TP
 Docket No. 960846-TP
 Docket No. 960916-TP

Filed: October 4, 1996

MCI'S MOTION FOR RECONSIDERATION OF
 PREHEARING OFFICER'S RULING STRIKING ISSUE 9
 AS IT RELATES TO MCI
 AND REQUEST FOR ORAL ARGUMENT

MCI Telecommunications Corporation and MCI Metro Access
 Transmission Services, Inc. (collectively, MCI), pursuant to Rule
 25-22.0376, Florida Administrative Code, hereby request
 reconsideration of the Prehearing Officer's ruling, at the
 prehearing conference¹, which struck Issue 9 as it relates to
 MCI.²

- CK _____
- FA _____
- PP _____
- AF _____
- MMJ 7 _____
- JTR _____
- DAG _____
- LED 6 _____
- JM _____
- SFC _____
- ROH _____
- SEC 1 _____
- WAS _____
- OTH _____

¹ That ruling has not yet been embodied in a written
 order. Given the accelerated schedule for this docket, the
 Prehearing Officer suggested that MCI not await the written order
 before filing its motion for reconsideration.

² That ruling also struck Issues 8 and 22, as they relate
 to MCI, and Issue 27, which was an MCI-only issue. In the
 interests of administrative efficiency, MCI has elected not to
 seek reconsideration of the Prehearing Officer's ruling on these
 additional issues; but MCI does not waive its right to seek
 review of those rulings in the event any party seeks review of
 the final order in this docket.

RECEIVED 8 20 96
 EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
 10642 OCT-4 96 619
 FPSC-RECORDS/REPORTING

Because the ruling striking this issue is equivalent to the dismissal of an issue that MCI submitted for arbitration in this docket, MCI believes that the Commission must consider this question de novo, rather than under the standards normally applicable to a motion for reconsideration. MCI requests that the Commission hear brief argument on this motion at the start of the hearings in this docket.

As grounds for this motion, MCI states:

Background

1. In its Petition for Arbitration in this docket, MCI submitted a number of issues for arbitration. The major issues to be resolved were stated on Exhibit 5 of the Petition in language that MCI believed was suitable for inclusion in a procedural order.

2. At the subsequent issue identification meetings, BellSouth took the position that nine of MCI's identified issues were not the proper subject of arbitration, and should be excluded from arbitration by the Prehearing Officer.

3. The only issue addressed in this Motion for Reconsideration is as follows:

Issue 9. What should be the compensation mechanism for the exchange of local traffic between MCI and BellSouth?

4. BellSouth's position with respect to Issue 9 is that the compensation mechanism for exchange of local traffic is covered by a multi-state Interim Agreement between MCI and BellSouth, and that MCI cannot seek arbitration of an issue on

which a negotiated agreement exists. (A copy of the Interim Agreement -- which was included as Exhibit 2 to MCI's Petition for Arbitration -- is attached to this motion as Exhibit A.)

5. MCI's position is that the Interim Agreement expressly preserves MCI's right to pursue, in Florida, a compensation mechanism that differs from the mechanism contained in the Interim Agreement.

6. At the staff's request, the MCI and BellSouth submitted letter briefs on their respective positions, so that the Prehearing Officer could rule on the disputed issues. (A copy of MCI's letter brief is attached hereto as Exhibit B.)

7. At the Prehearing Conference held October 3, 1996, the staff made a verbal recommendation that the Prehearing Officer strike certain disputed issues, including Issue 9, and that he allow other disputed issues to remain. The Prehearing Officer accepted the staff's recommendation without hearing further argument from the parties, and ruled (among other things) that Issue 9 be stricken as it relates to MCI. Although the record of the prehearing conference may not clearly indicate the basis for that ruling, MCI believes that the Prehearing Officer determined that this issue was in fact resolved by the Interim Agreement and therefore could not be litigated in this arbitration proceeding.

Argument

8. The Prehearing Officer's ruling should be overturned for two reasons. First, MCI has a federal statutory right to have the Commission resolve any interconnection issue that it properly

submits for arbitration pursuant to the Telecommunications Act of 1996 (Act). Second, the Interim Agreement does not preclude MCI from seeking a different compensation mechanism than that contained in the Interim Agreement.

Arbitration Required by Act

9. Section 251(c) of the Telecommunications Act of 1996 (Act) places on BellSouth the duty:

to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.

Subsection (b)(5) relates to reciprocal compensation and subsection (c) relates, among other things, to interconnection.

10. To the extent that negotiations on any of these issues are not successful, Section 252(b) permits a negotiating party to petition the state commission to resolve the issues through arbitration. Subsection (2)(A) of 252(b) requires a petitioning party such as MCI to identify each unresolved issue submitted for arbitration, and subsection (4) requires the Commission to limit its consideration of any petition to the issues set forth in the petition and in any response thereto under subsection (3).

11. MCI submits that under these provisions the Commission has a federal statutory obligation to consider each of the issues submitted for arbitration by either party, so long as the issues relate to matters within the scope of Sections 251 and 252.

12. The compensation mechanism for local interconnection was identified by MCI in its Petition as an unresolved issue to

be arbitrated and this issue is clearly within the scope of Sections 251 and 252 of the Act. Therefore this issue must be arbitrated by the Commission.

Interim Agreement Does Not Preclude Arbitration

13. MCI believes that the Prehearing Officer erred in ruling that the Interim Agreement between MCImetro and BellSouth constitutes a negotiated resolution of Issues 9 so as to preclude arbitration in this proceeding.

14. MCI believes that this ruling is inconsistent with the clear language of the Interim Agreement. Section II.B of the Interim Agreement expressly provides that:

B. Upon the execution of this Agreement by both parties, MCI_m agrees that during the period that this Agreement is in effect MCI_m shall not argue for different treatment of interconnection and local number portability (and if necessary will modify existing positions) before the state commissions in the states covered by this Agreement; **provided, that MCI_m shall not be precluded from maintaining any positions in Florida and Tennessee** nor from maintaining in any forum that the appropriate pricing standard for transport, collocation and other network elements that may be included in this Agreement shall be according to the standards set out in Section 252 of the Telecommunications Act of 1996. Subject to the foregoing, the parties agree that nothing in this Agreement shall have the effect of preventing MCI_m from actively participating in any regulatory proceeding.

15. The Agreement could not be more clear. It does not preclude MCI_m from maintaining any positions in Florida, whether or not those positions are consistent with the provisions of the Interim Agreement. And "subject to the foregoing," nothing

precludes MCI from actively participating in any regulatory proceeding. The "foregoing" in this clause refers to the general limitation that MCI will not argue for different treatment of interconnection and local number portability than what is contained in the agreement, but this general limitation does NOT apply in Florida and Tennessee. Thus, under the Interim Agreement, MCI can take any position on any issue in any Florida proceeding.

16. This was a heavily negotiated provision in the Interim Agreement. In earlier drafts, BellSouth sought to limit MCI's right to take differing positions by referring to specific on-going dockets, such as the Florida Commission's interim LNP, interconnection, and resale dockets. MCI would not accept that limitation, and the parties ultimately agreed to the language set forth above. Under this provision, MCI is clearly permitted to take positions in any proceeding -- including state arbitration proceedings conducted under the auspices of Section 252 of the Act -- on any of the items covered by the Interim Agreement.

17. Although it is unclear to what extent the Prehearing Officer relied thereon, BellSouth also argues that the Interim Agreement represents the result of phase one of a two-phase negotiation under the Act. As Mr. Scheye states in his direct testimony in this docket:

. . .the only basis of negotiations was the requirements of the Act. The Act defined the issues and established the timeframes. Entering into negotiations on any other basis would have been somewhat useless.

* * *

Once the partial agreement [] was completed, MCI initiated additional discussions, i.e., phase two. BellSouth entered these discussions to negotiate issues not included in phase one, e.g. resale and unbundling. Revisiting the issues that were resolved in phase one would have been highly inefficient.

18. As Mr. Price points out in his rebuttal testimony, Mr. Scheye is wrong on both counts. The negotiations for the Interim Agreement were commenced under state statutes (including the 1995 revision to Chapter 364) in July or August, 1995, over six months before the Act even existed. The negotiations were not undertaken by MCI to ensure compliance with the Act -- they were undertaken to provide MCI with an interim framework to begin offering local services in Florida and other states where switches were planned for 1996. Further, the "additional negotiations" that took place after the Interim Agreement was signed included discussion of all of the items contained in MCI's Term Sheet (see Exhibit 3 to MCI's Petition for Arbitration) -- including subject matters that were touched on in the Interim Agreement as well as subject matters that were specifically excluded from the Interim Agreement.

Summary

19. MCI has the right under the Act to seek arbitration on any issues where it has not reached a comprehensive negotiated agreement. The quoted language in the Interim Agreement was carefully crafted to ensure that nothing in the agreement would detract from MCI's right to take -- with respect to Florida and

Tennessee -- any position on any issue and, if necessary, to seek arbitration regarding those issues. Thus the existence of the Interim Agreement is not a proper basis on which to exclude the pricing of local interconnection from this arbitration proceeding.

Request for Oral Argument

20. Because the price for local interconnection is one of the key items to be resolved in arbitration proceedings under Section 252 of the Act, and because the Prehearing Officer's ruling has the effect of partially dismissing MCI's Petition for Arbitration as it relates to this issue, MCI requests that the Commission grant brief oral argument on this motion -- perhaps limited to five minutes per side -- at the outset of the final hearings in this docket.

WHEREFORE, MCI respectfully requests that the Commission grant oral argument on this motion and that it reconsider and reverse the Prehearing Officer's ruling striking Issue 9 as it relates to MCI.

RESPECTFULLY SUBMITTED this 4th day of October, 1996.

HOPPING GREEN SAMS & SMITH, P.A.

By: Richard D. Melson
Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314
(904) 425-2313

and

MARTHA MCMILLIN
MCI Telecommunications Corporation
780 Johnson Ferry Road, Suite 700
Atlanta, GA 30342
(404) 843-6375

ATTORNEYS FOR MCI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 4th day of October, 1996.

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

Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.
Steven A. Augustino
Kelley Drye & Warren, LLP
1200 19th St., N.W., Ste. 500
Washington, DC 20036

Nancy White
c/o Nancy Sims
BellSouth Telecommunications
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Tracy Hatch
AT&T
101 N. Monroe St., Suite 700
Tallahassee, FL 32301

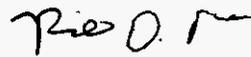
Floyd R. Self
Norman H. Horton, Jr.
Messer, Caparello, Madsen,
Godlman & Metz
215 S. Monroe St., Ste. 701
Tallahassee, FL 32301

and by UPS Delivery to:

Nancy White (and fax)
BellSouth Telecommunications
675 West Peachtree St., Ste. 4300
Atlanta, GA 30375

Robin D. Dunson
AT&T
Room 4038
1200 Peachtree St. NE
Atlanta, GA 30309

Riley M. Murphy
Charles H. N. Kallenbach
James Falvey
American Communications Services
Suite 100
131 National Business Parkway
Annapolis Junction, MD 20701



Attorney

EXECUTION COUNTERPART

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and MCImetro Access Transmission Services, Inc. ("MCI"), a Delaware corporation, and shall be deemed effective as of May 15, 1996. This agreement may refer to either BellSouth or MCI or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange telecommunications company authorized to provide telecommunications services in the states of Florida, Georgia, North Carolina, South Carolina, Alabama, Mississippi, Louisiana, Tennessee and Kentucky; and

WHEREAS, MCI is a local exchange telecommunications company authorized to provide telecommunications services in the states of Florida, Georgia, North Carolina and Tennessee with applications pending or expected to be filed in the remaining BellSouth states; and

WHEREAS, while BellSouth and MCI have differing positions on important business and policy issues regarding the appropriate terms and conditions of interconnection of their respective facilities, they each nevertheless believe that it is to their mutual benefit to reach an expeditious short term agreement on terms and conditions for interconnection so that their respective customers may communicate with each other; and

WHEREAS, the parties began negotiating prior to the effective date of the Telecommunications Act of 1996 ("Act") and have reached agreement to govern their relationship for the two year period commencing with the effective date of this Agreement on a number of items, such as interconnection, reciprocal compensation, interim number portability, access to 911/E911 services, matters relating to directory listings and directory distribution, interchange of local 800 traffic, use of BellSouth's line information database ("LIDB"), and access to BellSouth's SS7 database, to the extent contained in this Agreement; and

WHEREAS, the parties acknowledge that the following items shall not be deemed to be included in this Agreement (either by themselves or to the extent such items are an element of the items referred to in the preceding sentence) and are therefore subject to further negotiation: resale of local exchange service, provision of unbundled loops, provision of unbundled transport services, provision of unbundled switching services, and any other item that either party may consider to be required by the Act; and

WHEREAS, the parties agree that this Agreement shall be filed with the appropriate state commissions in compliance with Section 252 of the Act; and

WHEREAS, the parties recognize that negotiations will be required to reach a comprehensive agreement that satisfies the terms of Sections 251 and 252(d) of the Act and have commenced good faith negotiations toward such a comprehensive agreement; and

WHEREAS, to the extent that renegotiation of the items contained herein is necessary to bring about a comprehensive agreement the parties may modify the terms reflected in this Agreement; and

WHEREAS, once the parties have reached such a comprehensive agreement the parties will file the agreement with the appropriate state commissions under Section 252 of the Act; and

WHEREAS, the parties agree that further guidelines from the Federal Communications Commission as a result of CC Docket 96-98 on the items contained in this Agreement may require the parties to further negotiate said items;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and MCIIm agree as follows:

I. Term of the Agreement; Regulatory Changes; Adjustments

A. The term of this Agreement shall be two years, beginning May 15, 1996.

B. The parties agree that (1) if the Federal Communications Commission ("FCC") or a state public utilities commission or other state or local body having jurisdiction over the subject matter of this Agreement ("State Authority") finds that the terms of this Agreement are inconsistent in one or more material respects with any of its or their respective decisions, rules or regulations promulgated, or (2) if the FCC or a State Authority preempts the effect of this Agreement, then in the event of the occurrence of (1) or (2), which occurrence is final and no longer subject to administrative or judicial review, the parties shall immediately commence good faith negotiations to conform this Agreement with any such decision, rule, regulation or preemption. The revised agreement shall have an effective date that coincides with the effective date of the original FCC or State Authority's action giving rise to such negotiations. The parties agree that the rates, terms and conditions of any new agreement shall not be applied retroactively to any period prior to such effective date.

C. In the event that BellSouth provides interconnection and/or temporary number portability arrangements via tariff or has or enters into an interconnection and/or temporary number portability agreement with another entity, BellSouth will permit MCI_m an opportunity to inspect such tariff or agreement and upon MCI_m request BellSouth will immediately offer MCI_m an agreement on the same material terms with effect from the date BellSouth first made such tariff effective or entered into such arrangement and for the remainder of the term of this Agreement. The other items covered by this Agreement and not covered by such tariff or agreement shall remain unaffected and as to such items this Agreement shall remain in effect.

D. In the event that BellSouth is required by an FCC or a State Authority decision or order to provide any one or more terms of interconnection or other matters covered by this Agreement that individually differ from any one or more corresponding terms of this Agreement, MCI_m may elect to amend this Agreement to reflect all of such differing terms (but not less than all) contained in such decision or order, with effect from the date MCI_m makes such election. The other items covered by this Agreement and not covered by such decision or order shall remain unaffected and as to such items this Agreement shall remain in effect.

II. Scope of the Agreement

A. This Agreement will govern the interconnection arrangements between the parties to facilitate the interconnection of their facilities and the connection of local and interexchange traffic initially in the states of Florida, Georgia, Tennessee, Alabama, and North Carolina. The parties agree that additional states may be added to the Agreement on the same terms contained herein upon mutual agreement, which agreement will not unreasonably be withheld. The term of this Agreement shall remain 2 years from the date set forth in Section I.A. above even for any such additional states.

B. Upon the execution of this Agreement by both parties, MCI_m agrees that during the period that this Agreement is in effect MCI_m shall not argue for different treatment of interconnection and temporary local number portability (and if necessary will modify existing positions) before the state commissions in the states covered by this Agreement; provided, that MCI_m shall not be precluded from maintaining any positions in Florida and Tennessee nor from maintaining in any forum that the appropriate pricing standard for transport, collocation and other network elements that may be included in this Agreement shall be according the standards set out in Section 252 of the Telecommunications Act of 1996. Subject to the foregoing, the parties agree that nothing in this Agreement shall have the effect of preventing MCI_m from actively participating in any regulatory proceeding.

III. Local Interconnection

A. The parties agree for the purpose of this Agreement only that local interconnection is defined as the delivery of local traffic to be terminated on each party's local network so that customers of either party have the ability to reach customers of the other party, without the use of any access code or substantial delay in the processing of the call. The parties further agree that the exchange of traffic on BellSouth's Extended Area Service, Extended Calling Service, and other toll substitute calling routes shall be considered local traffic. The delivery of local traffic shall be reciprocal, and compensation shall be a flat per minute uniform and mutual rate based on BellSouth's local switching rates with averaged transport distances. The mutual rate shall not include the Carrier Common Line and Interconnection charges, which charges will not be assessed by either party. The state specific local interconnection rates are as delineated on Attachment "A" incorporated herein by this reference.

B. The parties acknowledge that the quality, elements, and costs of local interconnection can vary, but that, for the purposes of this Agreement only, the parties will average the rates for both tandem and end office switching configurations and for transport distances in the development of the mutual and reciprocal rate described in subsection (A), above.

C. In order to mitigate the potential adverse impact on either party which might occur as a result of an imbalance of terminating local traffic between the parties, neither party shall be required to compensate the other for more than up to 105% of the total minutes of use of the party with the lower minutes of use in the same month. This cap shall apply to the total local minutes of use calculated on a company-wide basis for each state having an explicit traffic exchange rate covered by this Agreement.

D. Establishing POIs

(1) The parties shall designate points of interconnection ("POIs") on each other's networks. MCI shall at a minimum designate a POI at each BellSouth access tandem serving the local calling area of the exchanges being served by MCI. MCI may designate additional POIs within a BellSouth local calling area and BellSouth will not unreasonably refuse to interconnect at each such designated POI. BellSouth may designate a POI at one or more of MCI's local switching centers within each LATA in which MCI is providing local service. If no MCI local switching center is located within such LATA, the parties will arrange a POI at a

mutually agreed point within such LATA. MCIIm will not unreasonably refuse to interconnect at a POI designated by BellSouth.

(2) Each party shall be responsible for routing calls to the POI for termination via the other's facilities. Each party shall bear its own costs related to installation at the POI. MCIIm may establish POIs on the BellSouth network via a negotiated expanded interconnection arrangement or via leased transport between the MCIIm network and the BellSouth access tandem. BellSouth may establish POIs on the MCIIm network via an expanded interconnection arrangement at an MCIIm local switching center or via leased transport between an MCIIm expanded interconnect arrangement and an MCIIm local switching center. The parties may charge their tariffed or other generally available rates for the expanded interconnection arrangements and leased transport they may acquire from one another in order to establish the POI.

(3) MCIIm will compensate BellSouth for terminating local traffic which is delivered at the POI for termination on BellSouth's network or other subtending networks in accordance with Sections III.A., III.B. and III.C., above. BellSouth will compensate MCIIm for terminating local traffic which is delivered at the POI for termination on MCIIm's network in accordance with Sections III.A., III.B. and III.C., above. Except as provided in Section IV, no rate elements other than those specified in Sections III.A., III.B. and III.C shall apply to terminating local traffic. Neither carrier shall impose any charge for delivery of originating traffic to the POI (except that the parties will compensate each other for intraLATA 800 service and similar called-party-pays services at their intrastate switched access rates).

(4) Either party may use the POI for the interconnection of other types of services, such as toll services, subject to the applicable rates for such interconnection.

E: Trunking and signaling

(1) (a) The party receiving traffic for termination can elect to receive the traffic in one of two ways: (a) separate trunks for local and non-local; or (b) on combined trunks; provided that separate trunk groups shall be utilized where the delivering party is unable to furnish an auditable percent local usage ("PLU") factor to the party receiving the traffic on a quarterly basis.

(b) If direct end office trunking with combined trunks is used (see III.E.(3) below), the parties will cooperatively develop a procedure for

accurately determining the amount of interLATA access traffic for proper application of switched access charges.

(2) The parties may use either one way or two way trunking or a combination, as mutually agreed.

(3) Trunking can be established to tandems or end offices or a combination as mutually agreed. Normally, trunking will be at the DS-1 level. On a trunk group specific basis, the parties may agree to establish trunking at higher (e.g., DS-3) levels. Initial trunking will be established between the MCI local switching centers and the Bell South access tandems. The parties will utilize direct end office trunking under the following conditions:

(a) BellSouth tandem exhaust - If a BellSouth access tandem to which MCI is interconnected is unable to, or is forecasted to be unable to, support additional traffic loads for any period of time, the parties will mutually agree on an end office trunking plan that will alleviate the tandem capacity shortage and ensure completion of traffic between MCI and BST subscribers.

(b) Traffic volume - The parties shall install and retain direct end office trunking sufficient to handle actual or reasonably forecast traffic volumes, whichever is greater, between an MCI local switching center and a BellSouth end office where traffic between such points exceeds or is forecast to exceed 125,000 minutes of local traffic per month. The parties will install additional capacity between such points when overflow traffic between the MCI switching center and BellSouth access tandem exceeds or is forecast to exceed 125,000 minutes of local traffic per month.

(c) Mutual agreement - The parties may install direct end office trunking upon the mutual agreement in the absence of conditions (a) or (b) above and agreement will not unreasonably be withheld.

(4) There will be no charges for the trunking to either the tandem or end office other than those established in Section III D.(2).

(5) The parties will provide common channel signaling ("CCS") to one another, at no charge, in conjunction with all local and transit trunk groups. The parties will cooperate in the exchange of TCAP messages to facilitate full interoperability of CCS-based features between their respective networks, including

all CLASS features and functions, to the extent each carrier offers such features and functions to its own end users.

(6) The parties will cooperate to jointly plan for the deployment of intercompany 64 Kbps per second clear channel capability.

F. Trunk forecasting

The parties shall periodically exchange technical descriptions and forecasts of their interconnection and traffic requirements in sufficient detail to assure traffic completion to and from all customers within the appropriate calling areas.

G. Network Management

(1) The parties agree to work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, the exchange of appropriate information concerning network changes that affect services to the other party, maintenance contact numbers and escalation procedures.

(2) The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

(3) The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls, e.g., call gapping, to alleviate or prevent network congestion.

(4) Except as provided for in Section III. D.(2) neither party will charge the other reconfiguration charges for new installations at existing POIs.

(5) The parties agree to provide each other with the proper call information, i.e., originated call party number and destination call party number, CIC, and OZZ, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. The exchange of information is required to enable each party to route traffic and bill properly.

(6) The parties will cooperate to determine the performance of their respective networks and will implement joint management controls to further overall service integrity.

H. MCIIm will assign telephone numbers to its customers using at least one NXX per BellSouth tariffed exchange; provided, that sufficient quantities of numbering resources are made available to MCIIm.

IV. Transit Traffic with Local Exchange Companies other than BellSouth ("OLECs"), Independent Companies and Wireless Providers

If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) an OLEC other than MCIIm; (2) an incumbent independent local exchange telecommunications company ("ICO"); or (3) a wireless telecommunications service provider, the party performing the intermediary function will bill a per minute charge of \$.005 in Florida and \$.002 in all other states, in either case in lieu of the local interconnection rates set out in section III(A) of this Agreement; provided, that the exchange carrier from which the call originated and the exchange carrier to which the call is to be terminated are interconnected at the same transit point.

V. Transit Traffic with IXCs

A. If BellSouth provides intermediary functions for network access service connection between an IXC and MCIIm for the purpose of completing intraLATA and interLATA toll calls, each party will provide their own network access services to the IXC on a meet-point basis. The meet-point billing arrangement will be Multiple Bill/Single Tariff option as defined by MECAB. BellSouth may charge the IXC for use of the entrance facility, the tandem switching and a mutually agreed portion of non-interconnection transport charge. BellSouth will not include an element for the Residual Interconnection Charge ("RIC") and MCIIm will be entitled to bill and collect the appropriate RIC and/or any other applicable rate elements.

B. Each party will provide to the other access records sufficient to enable billing to the IXCs. Records shall be provided in the Exchange Message Record format, BellCore Standard BR 010-200-010, as amended.

C. (1) BellSouth shall provide to MCIIm, on a daily basis, Switched Access Detail Usage data (EMR Category 1101XX records) for calls from IXCs that have transited BellSouth's tandems and terminated to MCIIm's switching centers.

(2) MCIIm shall provide to BellSouth, on a monthly basis, Switched Access Summary Usage Data (EMR Category 1150XX records) for calls to IXCs which originate at MCIIm's switching centers.

(3) The parties will mail necessary billing information on magnetic tape or tape cartridge using EMR format to:

If to MCIIm:

If to BellSouth:

CSI/NIB

Attention: David Carr
1315 Stadium Drive
Mankato, Minnesota 56001

or at such other addresses the intended recipient previously shall have designated by written notice to the other party.

(4) The parties will exchange test files to support the initial implementation of the processes defined in Section V of this Agreement. Exchange of test data will commence one week after AMA certification begins. Test data shall be actual recorded usage records.

(5) The parties shall coordinate and exchange the billing account reference (BAR as defined by MECAB) and bill account cross reference (BACR as defined by MECAB) numbers for meet point billing service. Each party shall notify the other if the level of billing or other BAC/BACR elements change, resulting in a new BAR/BACR number.

(6) The parties shall negotiate the BIP percent for each tandem.

VI. Interim Local Number Portability

A. BellSouth will make Remote Call Forwarding ("RCF") available as a means to implement interim local number portability. The parties agree to pay \$1.50 per business line (one path) per month, and \$1.25 per residential line (one path) per month for each line equipped with remote call forwarding. In addition, there will be a charge of \$.50 for each additional path per month. The nonrecurring charge for the establishment of RCF will be \$25.00 per order for multiple residential or business lines for one or more end user customers placed on the same order within an NPA or the area included within an NPA.

B. No later than March 31, 1997 BellSouth will make a revised cost study for RCF available for review by MCIIm under an appropriate confidentiality agreement. BellSouth will negotiate price reductions for RCF based on the results of such cost study, if any such reduction is appropriate, which shall be effective thirty (30) days after the date of such cost study.

C. In those instances where toll traffic is terminated to a number ported to MCI using RCF, then BellSouth will bill access to the IXC under the meet point arrangements agreed to in Section V hereof. Notwithstanding the foregoing, if MCI is directly interconnected to MCI Telecommunications Corporation and to AT&T Corporation for traffic other than that which involves a remote call forwarded call, then BellSouth will remit to MCI all access revenues that it is entitled to charge any IXC. Although this provision will provide access revenues to MCI for traffic involving IXCs with which it is not directly interconnected, the parties have reached this agreement because it is administratively efficient and convenient for BellSouth.

VII. Certain Other Services

Certain other BellSouth services shall be provided as set forth in Appendix B.

VIII. Unbundled Network Elements, Local Resale, and Permanent Local Number Portability

Except as otherwise provided herein, the parties have not come to agreement on the issues of unbundled network elements, local resale and permanent local number portability and, as such, these issues will remain outside the scope of this Agreement. Both parties agree to continue to negotiate in good faith on these issues. The provisions in VII above will not prejudice positions the parties may take in such negotiations or in regulatory proceedings where terms and conditions governing the purchase of such services from BellSouth are at issue.

IX. Liability and Indemnification

A. Liability Cap.

(1) With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MCI, any MCI customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article IX, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by MCI, any MCI customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by MCI resulting from the failure of BellSouth to honor in one or more material respects any

one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

(2) With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by MCI_m pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article IX, MCI_m's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of MCI_m and claims for damages by BellSouth resulting from the failure of MCI_m to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.

B. Neither party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service.

C. Neither party shall be liable for damages to the other party's terminal location, POI or the other party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such party's gross negligence or willful misconduct.

D. Notwithstanding subsection A., the party providing services under this Agreement, its affiliates and its parent company shall be indemnified, defended and held harmless by the party receiving such services against any claim, loss or damage arising from the receiving party's use of the services provided under this Agreement, involving: 1) claims for libel, slander, invasion of privacy or copyright infringement arising from the content of the receiving party's own communications; 2) any claim, loss, or damage claimed by the receiving party's customer(s) arising from such customer's use of any service, including 911/E911, that the customer has obtained from the receiving party and that the receiving party has obtained from the supplying party under this Agreement; or 3) all other claims arising out of an act or omission of the receiving party in the course of using services provided pursuant to this Agreement. Notwithstanding the foregoing, to the extent that a claim, loss or damage is caused by the gross negligence or willful misconduct of a

supplying party the receiving party shall have no obligation to indemnify, defend and hold harmless the supplying party hereunder.

E. Neither party guarantees or makes any warranty with respect to its services when used in an explosive atmosphere. Notwithstanding subsection A., each party shall be indemnified, defended and held harmless by the other party or the other party's customer from any and all claims by any person relating to the other party or the other party's customer's use of services so provided.

F. No license under patents (other than the limited license to use in the course of using a service provided pursuant to this Agreement) is granted by one party to the other or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement. Notwithstanding subsection A., the party providing a service pursuant to this Agreement will defend the party receiving such service against claims of patent infringement arising solely from the use by the receiving party of such service and will indemnify the receiving party for any damages awarded based solely on such claims. Such indemnification shall not, however, extend to claims for patent infringement to the extent the alleged infringement results from:

(1) Modification of the service by someone other than the providing party and/or its subcontractors, where there would be no such infringement or violation in the absence of such modification; or

(2) The combination, operation or use of the service with any product, data or apparatus not provided by the providing party and/or its subcontractors, where there would be no such infringement or violation in the absence of such combination, operation or use.

G. Promptly after receipt of notice of any claim or the commencement of any action for which a party may seek indemnification pursuant to this Article IX, such party (the "Indemnified Party") shall promptly give written notice to the other party (the "Indemnifying Party") of such claim or action, but the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability it may have to the Indemnified Party except to the extent the Indemnifying Party has actually been prejudiced thereby. The Indemnifying Party shall be obligated to assume the defense of such claim, at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party's reasonable requests for assistance or information relating to such claim, at the Indemnifying Party's expense. The Indemnified Party shall have the right to participate in the investigation and defense of such claim or action, with separate counsel chosen and paid for by the Indemnified Party.

H. A party's failure to provide or maintain services offered pursuant to this Agreement shall be excused to the extent such failure is the result of labor difficulties, governmental orders, civil commotion, criminal acts taken against such party, acts of God or other circumstances beyond such party's reasonable control.

X. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including but not limited to trade secrets, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). "Information" may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Regardless of the means of disclosure, Information shall be protected by the receiving party pursuant to the terms of this Article X provided that such Information should reasonably have been understood by the receiving party, because of legends or other markings, the circumstances of disclosure or the nature of the Information itself, to be proprietary and confidential to the disclosing party. Each party agrees that the Information it receives shall not be copied or reproduced in any form except to the extent reasonably necessary to such party's exercise of its rights or performance of its obligations pursuant to this Agreement. Each party agrees to protect the Information received from distribution, disclosure or dissemination to anyone except its employees with a need to know such Information. Each party will use the same standard of care to protect Information received as it would use to protect its own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of Information that is either 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; 3) previously known to the receiving party without an obligation to keep it confidential; or 4) independently developed by the receiving party without use of the Information received.

C. Disclosure of Information received shall not be prohibited to the extent such disclosure is compelled by a court or administrative agency having jurisdiction over the receiving party or is otherwise required by law. In such event, however, the receiving party shall use reasonable efforts to notify the other party prior to making such disclosure and shall cooperate in the other party's efforts to object to

such disclosure or to obtain confidential treatment of the Information to be disclosed.

D. This Article X shall survive the termination or expiration of this Agreement with respect to any Information disclosed by one party to the other while this Agreement was in effect. All Information shall be returned to the disclosing party within a reasonable time following the disclosing party's request or the termination or expiration of this Agreement, whichever is earliest.

XI. Resolution of Disputes

On a non-exclusive basis, the parties agree that any dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement may be brought before the appropriate State Commission or Commissions for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by a Commission concerning this Agreement or to seek resolution of a dispute before any other federal or state body or tribunal.

XII. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in any jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XIII. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XIV. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles, and the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996.

XV. Publicity

The parties intend to issue a joint press release announcing this Agreement upon its execution. Neither party will issue any other public announcement or otherwise publicize the existence or terms of this Agreement without the consent of the other; provided, that nothing shall prevent the parties from communicating the terms of this Agreement to any local, state or federal entity having jurisdiction over or an interest in its subject matter, notwithstanding Section XII above.

XVI. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

MCI metro Access Transmission
Services, Inc.

8521 Leesburg Pike

Vienna, VA 22182

with a copy to:

MCI Communications
Corporation
1801 Pennsylvania Ave., N.W.
Washington, DC 20006
Attention: General Counsel

or at such other addresses the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XVII. Entire Agreement

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

XVIII. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

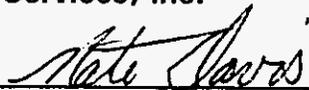
BellSouth Telecommunications, Inc.

BY: 
Signature

Name: R.A. Anderson
Printed Name

TITLE: President - BBS

MCImetro Access Transmission Services, Inc.

BY: 
Signature

Name: Nate Davis
Printed Name

TITLE: Chief Operating Officer

ATTACHMENT A

The state specific local interconnection rates are as follows:

<u>STATE</u>	<u>RATE</u>
Florida	\$0.011
Georgia	0.01
Tennessee*	0.019
Alabama	0.01
North Carolina	0.013

No additional charges for collocation, entrance facilities or additional transport services will apply unless mutually agreed.

* If during the term of this Agreement the intrastate local switching rate is reduced in Tennessee from \$0.0175 the interconnection rate for Tennessee will be reduced by the same dollar amount.

ATTACHMENT B

The parties agree to the following terms and conditions delineated below regarding the following features, functions and capabilities:

I. Access to 911/E911 Emergency Network

A. For basic 911 service, BellSouth will provide to MCIIm a list consisting of each municipality in each state covered under this Agreement that subscribes to Basic 911 service. The list will also provide, if known, the E911 conversion date for each municipality and, for network routing purposes, a ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to 911. MCIIm will arrange to accept 911 calls from its end users in municipalities that subscribe to Basic 911 service and translate the 911 call to the appropriate 10-digit directory number as stated on the list provided by BellSouth. MCIIm will route that call to BellSouth at the appropriate tandem or end office. When a municipality converts to E911 service, MCIIm shall discontinue the Basic 911 procedures and begin the E911 procedures, set forth in subsection (B), below.

B. For E911 service, MCIIm shall install a minimum of two dedicated trunks originating from MCIIm's serving wire center and terminating to the appropriate E911 tandem. The dedicated trunks shall be, at minimum, DS0 level trunks configured either as a 2 wire analog interface or as part of a digital (1.544 Mb/s) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) pulsing that will deliver automatic number identification (ANI) with the voice portion of the call. If the user interface is digital, MF pulses, as well as other AC signals, shall be encoded per the u-255 Law convention. MCIIm will provide BellSouth updates to the E911 database in a timely manner.

C. If a municipality has converted to E911 service, MCIIm will forward 911 calls to the appropriate E911 primary tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the primary tandem trunks are not available, MCIIm will alternatively route the call to a designated 7-digit local number residing in the appropriate PSAP. This call will be transported over BellSouth's interoffice network and will not carry the ANI of the calling party.

D. BellSouth and MCI agree that the practices and procedures contained in the E911 Local Exchange Carrier Guide For Facility-Based Providers ("LEC Carrier Guide"), as it is amended from time to time during the term of this Agreement by BellSouth with the agreement of MCI, shall determine the appropriate procedures and practices of the parties as to the provision of 911/E911 Access. The LEC Guide shall at a minimum include, or BellSouth shall separately provide, ALI database update procedures, 911 trunk restoration procedures, and special handling procedures for operator assisted emergency calls.

E. If MCI requires transport to the BellSouth 911 tandem, MCI may, at MCI's option, purchase such transport from BellSouth at rates set forth in either BellSouth's intrastate switched access services tariff or intrastate special access services tariff.

F. BellSouth obtain for MCI access to and copies of applicable Master Street Address Guides (MSAGs) and obtain updates for MCI.

G. Where BellSouth is responsible for maintenance of the E911 database and can be compensated for maintaining MCI's information by the municipality BellSouth shall seek such compensation. BellSouth may seek compensation for its costs from MCI only if and to the extent BellSouth is unable to obtain such compensation from the municipality. Within 30 days of the date of this Agreement BellSouth shall identify for MCI those municipalities for which BellSouth will seek compensation from MCI and the amount of such compensation.

II. Directory Listings and Directory Distribution

A. BellSouth will arrange to include the primary listing of each MCI customer in the residential or business white pages directories, as appropriate, as well as the directory assistance database, as long as MCI provides information to BellSouth in a manner compatible with BellSouth's operational systems. A primary listing is defined as either the MCI assigned number for a customer or the customer's number for which Service Provider Number Portability service is provided, but not both numbers.

B. BellSouth will not charge MCI to: 1) print MCI's customers' primary listings in the white pages directories as appropriate; 2) distribute directory books annually to MCI's customers; 3) recycle MCI's customers' directory books; and 4) maintain the Directory Assistance database. The parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format and content of listing information.

C. Additional listings and optional listings may be provided by BellSouth at the rates set forth in the General Subscriber Services Tariff as the tariff is amended from time to time during the term of this Agreement.

III. 800 Traffic

A. BellSouth agrees to compensate MCI, pursuant to MCI's published originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to BellSouth.

B. MCI will provide to BellSouth the appropriate records necessary for BellSouth to bill BellSouth's intraLATA 800 customers. The records provided by MCI will be in a standard EMR format for a fee, paid by BellSouth to MCI, of \$0.03 per record.

C. If MCI provides 800 services to its end users during the term of this Agreement, it agrees to compensate BellSouth, pursuant to BellSouth's originating switched access charges, including the database query charge, for the origination of 800 traffic terminate to MCI. BellSouth agrees to provide MCI the appropriate records for MCI to bill its 800 customers. The records provided will be in a standard EMR format for a fee, paid by MCI to BellSouth, of \$0.015 per record.

D. If during the term of this Agreement, BellSouth is permitted to provide interLATA 800 services, BellSouth will compensate MCI for the origination of such traffic pursuant to subsection A, above. MCI shall provide the appropriate records for billing pursuant to subsection B, above.

E. If MCI utilizes BellSouth's 800 database for query purposes only, the rates and charges shall be as set forth in BellSouth's Intrastate Access Services Tariff, as said tariff is amended from time to time during the term of this Agreement.

F. Should MCI require 800 Access Ten Digit Screening Service from BellSouth, it shall have signaling transfer points connecting directly to BellSouth's local or regional signaling transfer point for service control point database query information. MCI shall utilize SS7 Signaling links, ports and usage from BellSouth's Intrastate Access Services Tariff. MCI will not utilize switched access FGD service. 800 Access Ten Digit Screening Service is an originating service that is provided via 800 Switched Access Service trunk groups from BellSouth's SSP equipped end office or access tandem providing an IXC

identification function and delivery of call to the IXC based on the dialed ten digit number. The rates and charges for said service shall be as set forth in BellSouth's Intrastate Access Services Tariff as said tariff is amended from time to time during the term of this Agreement.

IV. Operator Services and Signaling

A. The parties agree to mutually provide busy line verification and emergency interrupt services pursuant to each party's published Tariffs as the Tariffs are amended from time to time during the term of this Agreement. The parties agree to cooperate with each other in formulating appropriate engineering solutions for this service.

B. BellSouth will also offer to MCI, pursuant to published tariff as the Tariffs are amended from time to time during the term of this Agreement, Directory Assistance Access Service, Directory Assistance Call Completion Access Service and Number Services Intercept Access Services. The offering of Directory Assistance Call Completion Access Service and number Services Intercept Access Services is subject to state commission approval.

C. BellSouth will enter MCI line information into its Line Information Database ("LIDB") pursuant to the terms and conditions to be contained in an agreement to be negotiated, which agreement shall be incorporated herein and made a part hereof by reference. MCI's presence in BellSouth's LIDB will enable MCI's end users to participate or not participate in alternate billing arrangements such as collect or third number billed calls.

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(904) 222-7500

FAX (904) 224-8551

FAX (904) 425-3415

Writer's Direct Dial No.
(904) 425-2313

September 12, 1996

GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
ANGELA R. MORRISON
GARY V. PERKO
KAREN M. PETERSON
MICHAEL P. PETROVICH
R. SCOTT RUTH
JULIE R. STEINMEYER
T. KENT WETHERELL, II

OF COUNSEL
W. ROBERT FOKES

JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
ELIZABETH C. BOWMAN
RICHARD S. BRIGHTMAN
PETER C. CUNNINGHAM
RALPH A. DeMEO
THOMAS M. DeROSE
WILLIAM H. GREEN
WADE L. HOPPING
FRANK E. MATTHEWS
RICHARD D. MELSON
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPLE
DOUGLAS S. ROBERTS
GARY P. SAMS
ROBERT P. SMITH
CHERYL G. STUART

BY HAND DELIVERY

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

Re: MCI/BellSouth Section 252 Arbitration
Docket No. 960846-TP
Letter Brief re Disputed Issues

Dear Donna:

In its Petition for Arbitration in this docket, MCI submitted a number of issues for arbitration. The major issues to be resolved were stated on Exhibit 5 of the Petition in language that MCI believed was suitable for inclusion in a procedural order.

At the subsequent issue identification meetings, BellSouth has taken the position that the nine issues listed below are not the proper subject of arbitration, and should be excluded from arbitration by the Prehearing Officer:

Issue 8. What are the appropriate trunking arrangements between MCI and BellSouth for local interconnection? [originally issue 9]¹

Issue 9. What should be the compensation mechanism for the exchange of local traffic between MCI and BellSouth? [originally issue 10]

¹ These issues are numbered as they were discussed in the most recent issue identification conference. The original issue number in brackets reflects the number or letter designation given to the issue in Exhibit 5 to MCI's Petition for Arbitration. In some cases, the wording of the issues has changed slightly from their original presentation.

Exh. bit B

650

Issue 22. What are the appropriate general contractual terms and conditions that should govern the arbitration agreement (e.g. resolution of disputes, performance requirements, and treatment of confidential information)? [originally issue 24]

Issue 24. What are the appropriate arrangements to provide MCI nondiscriminatory access to white and yellow page directory listings. [originally issue 25]

Issue 25. What should be the cost recovery mechanism for remote call forwarding (RCF) used to provide interim local number portability, in light of the FCC's recent order? [originally issue A]

Issue 26. What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase BellSouth's unbundled local switching element? How long should any transitional period last? [originally issue B]

Issue 27. What terms and conditions should apply to the provision of local interconnection by BellSouth to MCI? [originally issue C]

Issue 29. What are the appropriate rates, terms and conditions for access to code assignments and other numbering resources? [originally issue E]

Issue 30. What are the appropriate rates, terms and conditions related to the implementation of dialing parity for local traffic? [originally issue F]

MCI understands BellSouth's position to be that:

(1) issues 8, 9, 22, 24, 25, 27 and 29 are already covered by the Interim Agreement between the MCI and BellSouth (a copy of which was attached as Exhibit 2 to MCI's Petition), and that the existence of the Interim Agreement precludes their arbitration, and/or

(2) issues 25, 26 and 30 are industry-wide issues that should be resolved in generic proceedings rather than in two-party arbitration proceedings.

As explained below, MCI believes that each of these issues is a proper issue to be arbitrated in this docket.

Arbitration Required by Act

Section 251(c) of the Telecommunications Act of 1996 (Act) places on BellSouth the duty:

to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.

The duties described in subsections (b)(1) through (b)(5) relate to resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. The duties described in subsection (c) relate to interconnection, unbundled access, resale, notice of changes, and collocation.

To the extent that negotiations on any of these issues are not successful, Section 252(b) permits a negotiating party to petition the state commission to resolve the issues through arbitration. Subsection (2)(A) of 252(b) requires a petitioning party such as MCI to identify each unresolved issue submitted for arbitration, and subsection (4) requires the Commission to limit its consideration of any petition to the issues set forth in the petition and in any response thereto under subsection (3).

MCI submits that under these provisions the Commission has a federal statutory obligation to consider each of the issues submitted for arbitration by either party, so long as the issues relate to matters within the scope of Sections 251 and 252.

Each of the contested issues was identified by MCI in its Petition as an unresolved issue to be arbitrated. Each of the issues is within the scope of Sections 251 and 252 of the Act. Therefore each is an issue which must be arbitrated by the Commission.

Interim Agreement Does Not Preclude Arbitration

BellSouth takes the position that the Interim Agreement between MCImetro and BellSouth (a copy of which was included as Exhibit 2 to MCI's Petition for Arbitration) constitutes a negotiated resolution of issues 8, 9, 22, 24, 25, 27 and 29. Accordingly, BellSouth takes the position that these issues are "resolved" and are not proper subjects for arbitration.

BellSouth's contention is inconsistent with the clear language of the Interim Agreement. Section II.B of the Interim

Agreement expressly provides that:

B. Upon the execution of this Agreement by both parties, MCIIm agrees that during the period that this Agreement is in effect MCIIm shall not argue for different treatment of interconnection and local number portability (and if necessary will modify existing positions) before the state commissions in the states covered by this Agreement; provided, that MCIIm shall not be precluded from maintaining any positions in Florida and Tennessee nor from maintaining in any forum that the appropriate pricing standard for transport, collocation and other network elements that may be included in this Agreement shall be according to the standards set out in Section 252 of the Telecommunications Act of 1996. Subject to the foregoing, the parties agree that nothing in this Agreement shall have the effect of preventing MCIIm from actively participating in any regulatory proceeding.

The Agreement could not be more clear. It does not preclude MCIIm from maintaining any positions in Florida, whether or not those positions are consistent with the provisions of the Interim Agreement.

This was a hotly contested provision in the agreement. In earlier drafts, BellSouth sought to limit MCIIm's right to take differing positions by referring to specific on-going dockets, such as the Florida Commission's interim LNP, interconnection, and resale dockets. MCIIm would not accept that limitation, and the parties ultimately agreed to the language set forth above. Under this provision, MCIIm is clearly permitted to take positions in any proceeding -- including state arbitration proceedings conducted under the auspices of Section 252 of the Act -- on any of the items covered by the Interim Agreement.

BellSouth's position appears to be that the Interim Agreement represents the result of phase one of a two-phase negotiation under the Act. As Mr. Scheye states in his direct testimony in this docket:

. . .the only basis of negotiations was the requirements of the Act. The Act defined the issues and established the timeframes. Entering into negotiations on any other basis would have been somewhat useless.

* * *

Once the partial agreement [] was completed, MCI initiated additional discussions, i.e., phase two. BellSouth entered these discussions to negotiate issues not included in phase one, e.g. resale and unbundling. Revisiting the issues that were resolved in phase one would have been highly inefficient.

Mr. Scheye is wrong on both counts. The negotiations for the Interim Agreement were commenced under state statutes in July or August, 1995, over six months before the Act even existed. The negotiations were not undertaken by MCI to ensure compliance with the Act -- they were undertaken to provide MCI with an interim framework to begin offering local services in Florida and other states where switches were planned for 1996. Further, the "additional negotiations" that took place after the Interim Agreement was signed included discussion of all of the items contained in MCI's Term Sheet (see Exhibit 3 to MCI's Petition for Arbitration) -- including subject matters that were touched on in the Interim Agreement as well as subject matters that were specifically excluded from the Interim Agreement.

MCI has the right under the Act to seek arbitration on any issues where it has not reached a comprehensive negotiated agreement. The quoted language in the Interim Agreement was carefully crafted to ensure that nothing in the agreement would detract from MCI's right to take -- with respect to Florida and Tennessee -- any position on any issue and, if necessary, to seek arbitration regarding those issues.

Commission Jurisdiction to Interpret Agreement

The parties were specifically asked to address the question of whether the Commission has the authority to construe the Interim Agreement in making a decision on the inclusion or exclusion of the contested issues. MCI believes that the parties intended the Commission to have such jurisdiction, and points out that Section XI of the Agreement expressly provides that, on a non-exclusive basis, any dispute regarding the interpretation of any provision of the agreement may be brought before the appropriate state commission for resolution. As a practical matter, no other forum could consider this particular matter of interpretation in sufficient time for the Commission to comply with the 9-month deadline for concluding the arbitration proceeding.

In the event the Commission decides that it does not have jurisdiction to construe the agreement, then the decision on the inclusion or exclusion of the issues must be based solely on an analysis of the provisions of the Act. As noted above, all of these issues are proper matters for arbitration under the Act.

Generic Nature of Issues Does Not Preclude Arbitration

With respect to issues 25, 26, and 30, BellSouth takes the position that:

(a) these issues stem from requirements of FCC Orders that post-dated the negotiations, that subject matter of these issues was not negotiated by the parties, and, therefore, that the issues are not appropriate for arbitration; and/or

(b) the issues are generic in nature and should be resolved in generic proceedings in which parties other than MCI and BellSouth would be bound.

MCI will discuss each of the three contested issues in turn.

Cost Recovery Mechanism for Interim LNP. BellSouth's position that interim local number portability is not an "arbitration" issue under the Act does violence to the clear language of Sections 251 and 252. Section 251(b) imposes an obligation on BellSouth to provide local number portability in accordance with the requirements prescribed by the FCC. Those requirements, including a cost recovery mechanism, have now been prescribed by FCC Rules. Section 251(c)(1) imposes an obligation on BellSouth to negotiate terms and conditions of agreements to fulfill the duty to provide local number portability. And Section 252 permits a party to seek arbitration with respect to any Section 251 issue on which agreement has not been reached. As shown in Part XXI.2.1 of MCI's Term Sheet (Exhibit 3), the issue of cost recovery was negotiated by the parties. Thus the cost recovery mechanism for interim number portability is clearly a proper subject for arbitration under the Act.

MCI agrees that cost recovery is a generic issue, but that does not detract from the Act's requirement that BellSouth negotiate the issue and, failing agreement, that the Commission arbitrate the issue within the 9-month time frame established for the negotiation/arbitration process. The Commission's current timetable for the generic interim local number portability docket simply will not produce a result in time for incorporation into an arbitrated agreement pursuant to Section 252(d) of the Act.

BellSouth's concern that other parties will be prejudiced if

the issue is resolved between MCI and BellSouth is misplaced. Under Section 252(i), any provisions for interim local number portability included in the arbitrated agreement will be available immediately to any other interested party. To the extent that another party seeks a cost recovery mechanism different than that established in the MCI/BellSouth arbitration, they have the right to participate in the slower-moving generic docket. In either event, the decision in this docket will not "prejudice" third parties in any way.

Access Charges on Unbundled Local Switching. BellSouth argues that this is not a proper arbitration issue because it relates to the price of exchange access, which is not covered by the Act, and because it first arose out of the FCC Local Interconnection Order which post-dated the MCI/BST negotiations. BellSouth's position relies on a mischaracterization of the issue.

When MCI provides local service using unbundled network elements, including unbundled switching, access charges will be billed to interexchange carriers by or on behalf of MCI. The FCC Order permits BellSouth to collect, as part of the price of unbundled local switching, the CCL and a portion of the RIC that BellSouth would have billed if it had retained the end user customer. The issue is not what access charges will be paid by the IXC, the issue is what is the price of unbundled local switching provided to MCI. Under the FCC Rules, the price for unbundled local switching may, but is not required, to include a per-minute charge equal to the intrastate CCL and a portion of the intrastate RIC for intrastate access minutes that transit the unbundled switching element.

The pricing of unbundled switching is an issue that the parties sought to negotiate, and it is clearly within the proper scope of an arbitration proceeding. The fact that the price for unbundled switching may incorporate a rate element equal to an existing access charge rate element does not convert this pricing issue into an access charge issue.

Rates, Terms and Conditions for Local Dialing Parity. MCI understands that BellSouth's objection to this issue is that it is a generic issue that should be resolved in an industrywide proceeding. Like the issue of cost recovery for interim LNP, however, section 251(b)(3) of the Act clearly establishes dialing parity as a BellSouth duty which must be negotiated under section 251(c)(1). As shown by Part XII of the Term Sheet, this was a negotiated issue.

Donna Canzano
September 12, 1996
Page 8

As in the case of local number portability, any provisions on dialing parity which are included in the arbitrated agreement which results from this proceeding will be available to all parties, and nothing will preclude other parties from bringing their own arbitration proceedings, nor from participating in any subsequent generic proceeding on the issue.

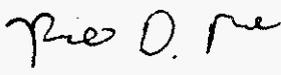
Conclusion

Each of the issues contested by BellSouth should be retained as an issue in this proceeding. The Act contemplates that the petition and the response will define the issues to be arbitrated; each of these issues has been so identified; nothing in the Interim Agreement precludes MCI from seeking arbitration of these issues, nor from taking arbitration positions that are inconsistent with the terms of the Interim Agreement; and the fact that some of the duties imposed by the Act are "generic" in nature does not remove them from the ambit of permissible arbitration.

As MCI noted at the last informal issue identification conference, it requests that the Prehearing Officer's ruling on the inclusion or exclusion of these issues be set forth in a written order, so that the basis for the ruling will be clear on the record.

Sincerely,

HOPPING GREEN SAMS & SMITH, P.A.

By: 

Richard D. Melson
Attorneys for MCI

cc: Nancy White (by fax)
Tracy Hatch (by hand)
Charles Rehwinkel (by hand)
Blanca Bayó (for docket file)