

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**May 30 , 2002**

**IN RE:**

**PETITION OF MCIMETRO ACCESS  
TRANSMISSION SERVICES, LLC AND  
BROOKS FIBER COMMUNICATIONS  
OF TENNESSEE, INC. FOR  
ARBITRATION OF CERTAIN TERMS  
AND CONDITIONS OF PROPOSED  
AGREEMENT WITH BELL SOUTH  
TELECOMMUNICATIONS, INC.  
CONCERNING INTERCONNECTION  
AND RESALE UNDER THE  
TELECOMMUNICATIONS ACT OF 1996**

**DOCKET NO.  
00-00309**

---

**ORDER DENYING RECONSIDERATION, GRANTING CLARIFICATION, AND  
ADOPTING WORLD COM'S FINAL BEST OFFER**

---

This docket came before the Directors of the Tennessee Regulatory Authority ("Authority"), acting as arbitrators, immediately following the May 7, 2002 Authority Conference for consideration of *BellSouth's Motion for Reconsideration and Clarification* filed by BellSouth Telecommunications, Inc. ("BellSouth") on April 18, 2002; *BellSouth Telecommunications, Inc.'s Proposed Contract Language for Issue 28* filed by BellSouth on April 19, 2002; and the *Best and Final Offer of WorldCom* filed by MCImetro Access Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom") on April 19, 2002.

**I. PROCEDURAL HISTORY**

On April 14, 2000, WorldCom filed a petition pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") requesting that the Authority arbitrate the

interconnection agreement between WorldCom and BellSouth. BellSouth filed a response to the petition on May 9, 2000. At the June 6, 2000 Authority Conference, the Directors accepted the petition for arbitration, appointed themselves as arbitrators, appointed General Counsel or his designee to serve as the Pre-Arbitration Officer, and directed the parties to participate in mediation.

The Arbitrators held a hearing on May 7 and 8, 2001. As a result of the hearing and negotiations preceding the hearing, the parties resolved many issues; however, the following twenty-eight (28) issues remained unresolved: 6, 8, 18, 28, 34, 35, 36, 37, 40, 42, 45, 46, 47, 48, 51, 52, 55, 56, 61, 62, 63, 64, 67, 68, 80, 95, 100, and 110. Immediately following a regularly scheduled Authority Conference on December 18, 2001, the Arbitrators deliberated the merits of these issues and ordered the parties to file final best offers on Issue Nos. 55, 67, and 95 and to brief Issue No. 67 by January 11, 2002. As directed, the parties filed their final best offers on each of the three outstanding issues and briefs on Issue No. 67 on January 11, 2002.

On January 28, 2002, WorldCom filed the *Motion of WorldCom to Strike Pages of BellSouth's Best and Final Offer for Issue 95*. BellSouth filed its response to the motion on February 11, 2002. Immediately following a regularly scheduled Authority Conference on February 26, 2002, the Arbitrators granted WorldCom's motion to strike and deliberated Issue Nos. 55, 67, and 95. Having resolved all remaining issues, the Arbitrators ordered BellSouth and WorldCom to file their interconnection agreement no later than March 28, 2002.

Instead of filing their interconnection agreement on March 28, 2002, BellSouth and WorldCom filed the *Joint Motion for Arbitrators to Resolve Issue*. In the motion, the

parties requested the assistance of the Arbitrators in resolving a disagreement over contract language related to Issue No. 28. The Arbitrators deliberated the *Joint Motion for Arbitrators to Resolve Issue* following the April 16, 2002 Authority Conference. Thereafter, a majority voted to grant the motion and to direct the parties to file their proposed language without comments by Friday, April 19, 2002 at 2:00 p.m.<sup>1</sup>

On April 3, 2002, the Arbitrators entered the *Interim Order of Arbitration Award* memorializing their decisions from the December 18, 2001 deliberations. On April 18, 2002, BellSouth filed *BellSouth's Motion for Reconsideration and Clarification* requesting reconsideration of Issue No. 28 and clarification of Issue No. 61. On April 19, 2002, in accordance with the Arbitrators' April 16<sup>th</sup> directive, BellSouth and WorldCom filed their proposed contract language. The Arbitrators deliberated the merits of *BellSouth's Motion for Reconsideration and Clarification* and the proposed contract language following the May 7, 2002 Authority Conference.

## II. DELIBERATIONS

### A. Issue No. 28 - Should BellSouth Provide the Calling Name Database ("CNAM") Via Electronic Download, Magnetic Tape, or Via Similar Convenient Media?

In the *Interim Order of Arbitration Award*, the Arbitrators found that "requiring BellSouth to provide an electronic download of the CNAM database to WorldCom is consistent with the Act and places BellSouth and WorldCom in parity."<sup>2</sup> Based on this finding, the Arbitrators voted "to require BellSouth to provide an electronic download of the CNAM database to WorldCom provided WorldCom compensates BellSouth for the

---

<sup>1</sup> Chairman Kyle did not vote with the majority. Instead, she stated that she had no objection to permitting the parties to file comments as well as proposed language.

<sup>2</sup> *Interim Order of Arbitration Award*, p. 15 (Apr. 3, 2002).

download.”<sup>3</sup> BellSouth’s arguments as to the validity of this decision were no different than those previously considered by the Arbitrators. BellSouth’s remaining arguments focused on the effects of the Arbitrators’ decision. These arguments are addressed by the adoption of WorldCom’s proposed contract language discussed below. Therefore, the Arbitrators unanimously voted to deny BellSouth’s request for reconsideration of Issue No. 28.

Both parties presented proposed contract language to implement the Arbitrators’ decision of Issue No. 28. BellSouth proposed the following language for the disputed sections of the interconnection agreement:

13.7.2.1.1 Further, the database download shall not include third party (e.g., ILEC, CLEC, and independent telephone company) subscriber records stored by BellSouth within its Customer Name (CNAM) database if prohibited by contractual arrangements with such third parties. **[Disputed]**

13.7.2.2 Within ten (10) business days of MCIm’s request, BellSouth shall submit to MCIm an estimate of the nonrecurring charge for development of the download process and the recurring charge for maintenance of the database and, including costs for the screening of data not subject to the download pursuant to this section 13.7, and for updated downloads, and such estimate shall be in accordance with the procedure in Attachment 1 for developing new prices. MCIm will respond to BellSouth within thirty (30) days after receipt of the charges from BellSouth as to whether MCIm accepts the estimated charges and wishes to receive a detailed price quote. If MCIm elects to receive a detailed price quote, it shall so notify BellSouth in writing and BellSouth, within an additional twenty (20) days, shall submit to MCIm a firm price quote for the download, in accordance with Attachment 1. If MCIm elects to proceed with the download, MCIm shall notify BellSouth of such intent and shall pay to BellSouth the nonrecurring charges for systems development. If negotiations of a firm price are incomplete, MCIm may accept BellSouth’s firm price quote as an interim rate, pursuant to subsection 1.4.1 of Attachment 1, and pay such interim rate, subject to retroactive true-up. Prior to transmission of the initial download, the Parties shall meet to establish appropriate business processes for downloads and updates of the data, including but not limited to initial download file size and anticipated update volume. If MCIm thereafter chooses to cancel its request for a

---

<sup>3</sup> *Id.*

download, BellSouth will return to MCI that portion of the nonrecurring charges that BellSouth has not yet incurred as of the date of cancellation. BellSouth shall develop the system in accordance with a reasonable implementation schedule mutually agreed to by the Parties. **[Disputed]**

13.7.2.2.1 The charge to MCI for providing the CNAM database shall include all developmental costs, including those costs associated with screening information not subject to download as provided in this Section 13.7. **[Disputed]**

....

13.7.2.5 Any download of information in the CNAM Database for Tennessee is provided to MCI only for MCI to query originating calls to an MCI local end user for the purpose of providing caller identification name to the MCI end user. MCI shall not use the data for any other purpose, including but not limited to (1) selling queries to third parties, (2) disclosing such information to third parties or affiliates, or (3) marketing any service of MCI or any third party. BellSouth shall have the right to audit MCI's use of the data to determine compliance with this Subsection. Such audit shall be performed at BellSouth's expense by an independent auditor, shall be based on a good faith belief that MCI is not complying with this subsection, and shall be in accordance with Generally Accepted Auditing Standards (GAAS). The independent auditor shall keep MCI's network and operational information strictly confidential, and shall only release the final audit results to BellSouth. In the event of a breach of this Section, all updates to the CNAM information shall cease, and MCI shall immediately return all data to BellSouth. **[Disputed]**<sup>4</sup>

WorldCom proposed the following language:

13.7.2.1.1 The database download shall not include third party (e.g., ILEC, CLEC, and independent telephone company) subscriber records stored by BellSouth within its Customer Name (CNAM) database. **BellSouth shall make a good faith effort to obtain permission from third party carriers to include their subscriber records stored within BellSouth's CNAM database. Unless a third party carrier specifically prohibits BellSouth from identifying that carrier, BellSouth shall identify to MCI which third party carriers do not give such permission, so that MCI can approach such third party carriers to obtain data.**

13.7.2.2 Within ten (10) business days of MCI's request, BellSouth shall submit to MCI an estimate of the nonrecurring charge for

---

<sup>4</sup> *BellSouth Telecommunications, Inc.'s Proposed Contract Language for Issue 28*, pp. 2-3 (Apr. 19, 2002) ("Agreed" language not quoted).

development of the download process and the recurring charge for maintenance of the database and, **including costs for the screening of data not subject to the download pursuant to subsection 13.7.2.1.1**, if any, for updated downloads, and such estimate shall be in accordance with the procedure in Attachment 1 for developing new prices. MCIm will respond to BellSouth within thirty (30) days after receipt of the charges from BellSouth as to whether MCIm accepts the estimated charges and wishes to receive a detailed price quote. If MCIm elects to receive a detailed price quote, it shall so notify BellSouth in writing and BellSouth, within an additional twenty (20) days, shall submit to MCIm a firm price quote for the download, in accordance with Attachment 1. If MCIm elects to proceed with the download, MCIm shall notify BellSouth of such intent and shall pay to BellSouth the nonrecurring charges for systems development. If negotiations of a firm price are incomplete, MCIm may accept BellSouth's firm price quote as an interim rate, pursuant to subsection 1.4.1 of Attachment 1, and pay such interim rate, subject to retroactive true-up. Prior to transmission of the initial download, the Parties shall meet to establish appropriate business processes for downloads and updates of the data, including but not limited to initial download file size and anticipated update volume. If MCIm thereafter chooses to cancel its request for a download, BellSouth will return to MCIm that portion of the nonrecurring charges that BellSouth has not yet incurred as of the date of cancellation. BellSouth shall develop the system in accordance with a reasonable implementation schedule mutually agreed to by the Parties.

.....

**13.7.2.5 Any download of information in the CNAM Database for Tennessee is provided to MCIm only for MCIm to provide telecommunications services[.] MCIm shall not use the data for any other purpose, including but not limited to (1), disclosing such information to third parties or affiliates, except to provide a telecommunications service, or (2) marketing any service of MCIm or any third party. BellSouth shall have the right to audit MCIm's use of the data to determine compliance with this Subsection. Such audit shall be performed at BellSouth's expense by an independent auditor, shall be based on a good faith belief that MCIm is not complying with this subsection, and shall be in accordance with Generally Accepted Auditing Standards (GAAS). The independent auditor shall keep MCIm's network and operational information strictly confidential, and shall only release the final audit results to BellSouth.**<sup>5</sup>

---

<sup>5</sup> *Best and Final Offer of WorldCom*, attachment (Apr. 19, 2002) (per WorldCom, bold language indicates "best and final offer language").

If WorldCom chooses to obtain a download of BellSouth's CNAM database, according to the Arbitrators' decision it must compensate BellSouth. Therefore, it is reasonable to require BellSouth to make a "good faith effort" to obtain permission to provide records of third parties. Additionally, the Arbitrators find that WorldCom's proposed language more accurately reflects the decision of the Arbitrators. Therefore, the Arbitrators voted to adopt the proposed language contained in the *Best and Final Offer of WorldCom*.

**B. Issue No. 61 - For Purposes of the Interconnection Agreement Between WorldCom and BellSouth, Should the Per Ampere Rate for the Provision of DC Power to WorldCom's Collocation Space Apply to Amps Used or to Fused Capacity?**

In the *Interim Order of Arbitration Award*, the Arbitrators ruled that the per ampere rate for the provision of DC power to WorldCom's collocation space should apply to amperes used and not to fused capacity.<sup>6</sup> Because the *Interim Order of Arbitration Award* did not clearly set forth which party would be responsible for monitoring the consumption of DC power, clarification is required. It is reasonable to conclude that WorldCom should pay the reasonable cost of monitoring actual DC consumption given that WorldCom has consistently maintained that power consumption should be measured by the amps used.<sup>7</sup> Therefore, the Arbitrators voted to require WorldCom to pay the expense associated with the monitoring of the actual DC power consumed.

**III. ORDERED**

The foregoing *Order Denying Reconsideration, Granting Clarification, and Adopting WorldCom's Final Best Offer* disposes of *BellSouth's Motion for Reconsideration and Clarification; BellSouth Telecommunications, Inc.'s Proposed*

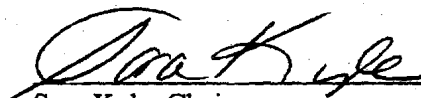
---


<sup>6</sup> *Interim Order of Arbitration Award*, p. 43 (Apr. 3, 2002).

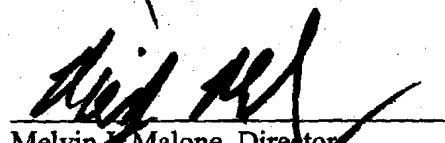
<sup>7</sup> Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 31-32 (Dec. 6, 2000); Phillip A. Bomer, Pre-Filed Rebuttal Testimony, pp. 17-18 (Dec. 13, 2000).

*Contract Language for Issue 28; and the Best and Final Offer of WorldCom.* All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding. BellSouth Telecommunications, Inc; MCImetro Access Services, LLC; and Brooks Fiber Communications of Tennessee, Inc. shall file their interconnection agreement no later than thirty (30) days from the entry of this Order.

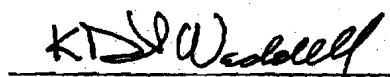
TENNESSEE REGULATORY  
AUTHORITY,  
BY ITS DIRECTORS ACTING AS  
ARBITRATORS

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary