BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: PETITION OF MCI WORLDCOM TO ENFORCE INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 01-00513

REPLY OF MCI WORLDCOM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

MCI WorldCom, Inc. ("MCI WorldCom") submits the following Reply in support of the Motion for Summary Judgment filed on August 27, 2001. As explained in the Motion, this proceeding involves an "Opt-In" contract between BellSouth Telecommunications, Inc. ("BellSouth") and Brooks Fiber, which is now part of MCI WorldCom. Brooks Fiber elected to adopt the MCImetro agreement which has been interpreted by the TRA to require payment of reciprocal compensation for ISP-bound traffic at an end office rate of $.004. On behalf of Brooks Fiber, MCI WorldCom now seeks the same relief.

BellSouth Telecommunications, Inc. ("BellSouth") has objected to the Motion and offers several reasons why BellSouth believes that summary judgment is not appropriate in this case. None of the reasons has any merit.

1. BellSouth argues that the case is not appropriate for summary judgment "because no evidence has yet been submitted." Memorandum, at 4.

BellSouth apparently overlooked that portion of the Motion (see Motion for Summary Judgment at 3) which asked that the Hearing Officer take judicial notice of the evidentiary record developed in Docket 99-00662 (the MCImetro case) and then, on the basis of that record, grant

summary judgment for MCI WorldCom. The evidentiary record in this case will therefore be the same record developed by the parties concerning the MCImetro agreement.

2. BellSouth states (at 3) that MCI WorldCom "appears to seek recovery" at the tandem switching rate and that there is "a genuine issue of material fact" as to whether the tandem or oval office rate applies.

BellSouth is incorrect. MCI WorldCom has elected not to challenge the TRA's decision in the MCImetro case regarding the tandem/end office issue. Therefore, there is no "genuine issue of material fact" concerning the tandem/end office issue.

3. Relying on the FCC's Remand Order, released on April 27, 2001, BellSouth argues that the TRA may not have jurisdiction over this dispute and that BellSouth is "entitled to create a record of the facts in this case which bear on these legal issues."

As noted in the Motion for Summary Judgment, at 2-3, the Authority has already addressed the impact of the FCC's Remand Order on the MCImetro contract and ruled that the FCC's decision does not affect BellSouth's obligation to pay reciprocal compensation for ISP traffic under that contract. Since Brooks Fiber adopted the MCImetro contract, the ruling applies equally to both cases.

4. BellSouth's argues that "there is a genuine question of fact as to which rate should apply" in this case -- the $.004 rate agreed to in the MCImetro contract or the generic rate of $.0008041 set by the TRA in docket 97-01262 (the "Permanent Pricing" proceeding). BellSouth contends that the lower rate, which was approved by the TRA on December 19, 1999 automatically "superceded" the parties' contract rate and should be applied to all usage after that date.

First, the issue of whether the generic UNE rates set by the TRA in docket 97-01262 have preempted the rates set forth in the MCImetro agreement is a question of law, not fact. If, as

BellSouth contends, the TRA intended that the generic rates automatically replace all existing contract rates, whether or not requested by a competing carrier, there are no relevant "facts" to discuss.[1]

Second, BellSouth points to a sentence in the Opt-In Agreement in which both sides agreed to be bound by any "amendments" to the MCImetro contract "executed as a result of any final judicial, regulatory, or legislative action." Since, as BellSouth has acknowledged, there is no such "amendment," the quoted language is inapplicable on its face.[2]

5. Finally, BellSouth argues that it should be allowed to present evidence that MCI WorldCom was well aware, at the time the parties signed the Opt-In agreement, that the parties disagreed as to whether the MCImetro contract required payment of reciprocal compensation for ISP-bound traffic. The purpose of such testimony would be to support BellSouth's argument that, since it was not BellSouth's intent at the time of the Opt In agreement to pay for ISP-bound traffic, Brooks Fiber is not entitled to the same terms and conditions as contained in the MCImetro agreement.

As explained in the Motion for Summary Judgment, BellSouth's argument, if accepted, would undermine a CLEC's right under federal law to obtain interconnection "upon the same terms and conditions" as those BellSouth provides to any other carrier under a TRA-approved interconnection agreement. *See* 47 U.S.C. § 252(i).

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[1] BellSouth is also wrong on the law. As the TRA itself has explained to the CLEC industry, CLECs are "entitled" to the generic UNE rates if they elect to adopt them and may do so by providing written notice to BellSouth. See "Notice of Permanent Rates," March 7, 2001, copy attached. Contrary to BellSouth's argument, the generic UNE rates adopted in docket 97-01262 are not self-executing.

[2] MCI WorldCom continues to operate under the UNE rates, including the reciprocal compensation rates, established in the parties' interconnection agreements. MCI WorldCom has not elected, as other CLECs have, to adopt instead the UNE prices established in the Permanent Pricing docket.

The point is self-evident if one considers the issue in another context. If, for example, a BellSouth negotiator agreed to a low UNE rate for one carrier but then later changed his mind and refused to offer that same rate to other carriers, there is nothing BellSouth could do to prevent those other carriers from opting in to the same terms and conditions that BellSouth had agreed to earlier. Once BellSouth signed the MCImetro agreement, BellSouth could not legally prevent Brooks Fiber, or any other carrier, from adopting that same agreement. The fact that BellSouth later attempted to repudiate the terms of that contract is beside the point. As a matter of law, BellSouth had no choice but to make the MCImetro contract available to Brooks Fiber, which is now entitled to be paid reciprocal compensation under the same terms and conditions as MCImetro.

BellSouth also raised this issue in a reciprocal compensation complaint before the Florida Public Service Commission. The FPSC dismissed BellSouth's argument and ruled that, based on Section 25(i) of the federal Telecommunications Act, the issue of the parties' intent was only relevant, if at all, to the meaning of the underlying interconnection agreement, not to the meaning of a subsequently executed opt-in contract. In considering the intent of the parties at the time of the opt in agreement, the Commission wrote:

> Although we need not look beyond the plain language in the Agreement in this instance, we note that we do not believe that the intent of the parties at the time of the adoption is the relevant intent when interpreting an Agreement adopted pursuant to Section 252(i) of the Act. Rather, we believe the intent of the original parties is the determining factor when the Agreement language is not clear. Otherwise, original and adopting parties to an Agreement could receive differing interpretations of the same Agreement, which is not consistent with the purpose of Section 252(i) of the Act.[3]

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[3] *Complaint and/or Petition for Arbitration by Global NAOs, Inc. for Enforcement of Section VI (b) of its Interconnection Agreement with BellSouth Telecommunications, Inc. and Request for Relief*, Docket No. 991267-

(footnote continued on following page ...)

Upon reflection, BellSouth's argument makes no sense. It would mean that BellSouth would pay one rate to MCImetro but would pay a different rate to Brooks Fiber, even though both CLECs were operating under the same contract. As the FPSC noted, such a result is clearly inconsistent with the opt-in requirement of the federal Act.

CONCLUSION

None of the reasons provided by BellSouth in opposition to the Motion for Summary Judgment warrants serious discussion. The meaning of "local traffic" in the MCImetro agreement and the applicable rate for terminating ISP-bound traffic under the agreement have been established in Docket 99-00662. MCI WorldCom (operating as Brooks Fiber) opted into that same agreement and is clearly entitled to summary judgment on those issues without further delay.[4]

Respectfully submitted,

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(... footnote continued from previous page)
TP, Order No. PSC-00-0802-FOF-TP (FL. P.S.C., Apr. 24, 2000), *reconsideration denied*, Order No. PSC-00-1511-FOF-TP (Fl. P.S.C., Aug. 21, 2000), at page 8.

[4] To the extent the TRA's ruling in the MCImetro case did not address other issues relating to the payment of reciprocal compensation (*see Motion for Sanctions*, filed in 99-00662 on behalf of MCImetro) those issues are currently before the Authority and will presumably be resolved shortly. In the Motion for Summary Judgment, MCI WorldCom does not seek to address those issues but asks only for the same relief already granted to MCImetro in the TRA's orders of June 30, 2001 and July 12, 2001.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 11th day of September , 2001.

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TENNESSEE REGULATORY AUTHORITY

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NOTICE OF PERMANENT RATES

IN RE: **Petition of Bellsouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements**

DOCKET NO: **97-01262**

DATE: **March 7, 2001**

Section 251(c) of the Telecommunications Act of 1996 requires state commissions to establish cost-based rates for interconnection and unbundled network elements. Pursuant to that mandate, the Tennessee Regulatory Authority ("Authority"), at a regularly scheduled Authority Conference on December 19, 2000, established cost-based rates in Docket No. 97-01262, *In re Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements.* The rates established are effective as of December 19, 2000.

The Authority memorialized these rates in its Final Order filed on February 23, 2001. Competing Local Exchange Carriers ("CLECs") may obtain a copy of this Order from the Authority's website, www.state.tn.us/tra (Docket No. 97-01262), or by contacting the Authority's Executive Secretary, K. David Waddell, at (615) 741-3191, extension 142.

As a CLEC, you are entitled to cost-based rates pursuant to the Telecommunications Act of 1996 and by order of the Authority. To obtain these rates, notify BellSouth Telecommunications, Inc. in writing.

FOR THE TENNESSEE REGULATORY AUTHORITY

K. David Waddell, Executive Secretary

cc: Parties of Record
Competing Local Exchange Carriers

Original Notice in Docket File