BEFORE THE TENNESSEE REGULATORY AUTHORITY

Filed: August 15, 2005

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996	Docket No. 05-00231

PETITION OF MCI FOR ARBITRATION WITH BELLSOUTH UNDER THE TELECOMMUNICATIONS ACT OF 1996

MCImetro Access Transmission Services, LLC ("MCI") hereby petitions the Tennessee Regulatory Authority ("Authority") to arbitrate, pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "Act"), certain terms and conditions of a proposed interconnection agreement (the "Agreement") between MCI and BellSouth Telecommunications, Inc. ("BellSouth").

PARTIES

1. MCI's full name and its official business address for its Tennessee operations are as follows:

MCImetro Access Transmission Services, LLC
Six Concourse Parkway
Suite 600
Atlanta, Georgia 30328

MCI is a Delaware limited liability company with its principal place of business at 22001 Loudoun County Parkway, Ashburn, Virginia 20147. MCI has a Certificate of Authority

issued by the Authority that authorizes MCI to provide local exchange service and exchange access service in Tennessee. MCI is a "telecommunications carrier" and "local exchange carrier" under the Act.

2. The names and addresses of MCI's representatives in this proceeding are as follows:

James L. Murphy III
Boult, Cummings, Conners & Berry PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
Phone: (615) 252-2303
Fax: (615) 252-6303

and

Dulaney L. O'Roark III
Kennard B. Woods
MCI, Inc.
Six Concourse Parkway
Suite 600
Atlanta, Georgia 30328
Phone: (770) 284-5497
Fax: (770) 284-5488

and

Donna Canzano McNulty
MCI, Inc.
1203 Governors Square Boulevard
Suite 201
Tallahassee, Florida 32301
Phone: (850) 219-1008
Fax: (850) 219-1018

3. BellSouth is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth provides local exchange, long distance, and other services within its franchised

areas in Tennessee. BellSouth is a "Bell Operating Company" and an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

JURISDICTION

4. The Authority has jurisdiction to resolve the issues raised in this Petition under the Act. This Petition is timely filed.

NEGOTIATIONS

5. BellSouth currently offers interconnection, network elements and other services to MCI under an interconnection agreement previously approved by the Authority, which has been amended from time to time and has a three-year term, subject to an evergreen provision where, as here, MCI and BellSouth undertake negotiation and arbitration of a follow-on agreement and such negotiation and arbitration extend beyond the nominal termination date. Pursuant to Section 252 of the Act, MCI requested that the parties enter into negotiations for the follow-on Agreement that is the subject of this Petition. Such negotiations have taken place and have dealt with, among other things, general terms and conditions, unbundled network elements, interconnection, collocation, ordering and billing. The parties have been able to resolve most of the issues raised during the negotiations, but a number of issues remain unresolved.[1] Those issues identified by MCI, and the issues previously identified by BellSouth, are addressed in the Statement of Unresolved Issues below and in the matrix attached hereto as Exhibit A.

[1] Since the parties, as of the date of filing this Petition, are continuing to negotiate, to the extent that the resolution of some issues may not been identified herein MCI intends to amend the Petition and exhibits accordingly

6. A draft of the Agreement reflecting the parties' negotiations is attached hereto as Exhibit B. Agreed-upon language is shown in normal type; disputed language proposed by BellSouth is shown in bold underline and disputed language proposed by MCI is shown in bold italics. In the Statement of Unresolved Issues below and in Exhibit A, MCI has referenced the primary provisions in Exhibit B relating to each issue.

7. MCI requests that the Authority approve the Agreement between MCI and BellSouth reflecting (i) the agreed upon language in Exhibit B and (ii) the resolution in this arbitration proceeding of the unresolved issues described below.

STATEMENT OF UNRESOLVED ISSUES[2]

GENERAL TERMS AND CONDITIONS

ISSUE 1

What language should be included in the Parties' Agreement to limit or eliminate (a) liability in general, (b) liability arising from tariffs or contracts with End Users; or (c) liability for indirect, incidental or consequential damages? (General Terms and Conditions, Sections 5.2, 5.3, 5.5.)

MCI position: No such language should be included. The Authority should not impose limitations of liability not agreed to by the parties. BellSouth, as MCI's sole supplier and its competitor, is in a position to inflict substantial business harm and should not be allowed to absolve itself from liability when the parties have not so agreed.

BST position: The industry standard limitation of liability of bill credits should apply between the parties. Further, consistent with industry standards, neither party should be responsible for indirect, incidental or consequential damages to the other.

[2] As stated above, MCI has been negotiating with BellSouth, and continues to do soon a region-wide basis For administrative ease between the parties as they continue to negotiate, the numbering of issues filed in this petition reflects the numbering used during negotiations

If a CLEC elects not to limit its liability to its End Users in its tariffs or contracts, the CLEC and not BellSouth should bear the risk of loss arising from that business decision.

8. The Authority should not impose limitation of liability provisions that are not agreed upon by the parties, particularly in this context where BellSouth is MCI's wholesale supplier and a major competitor. For example, BellSouth may be aware of deficiencies in its ordering and provisioning systems that negatively affect MCI's ability to fulfill customer orders, or problems with BellSouth's maintenance procedures that negatively affect the service that its wholesale customers like MCI are able to provide to their end user customers. Out-of-service credits or service quality plan payments may only partially compensate MCI for the actual harm it experiences in the marketplace on account of BellSouth's acts or omissions. Indeed, BellSouth might rationally decide that it stands to gain more from retail sales (on account of customer frustration with MCI service) than it would pay out in credits or other service quality plan payments, and thus choose not to improve its wholesale provisioning performance to MCI. But under BellSouth's proposed language, MCI would not be able to recover lost profits from BellSouth under any circumstances. In light of BellSouth's role as both MCI's wholesale supplier and its competitor, the Agreement should not limit BellSouth's liability when the parties have not reached terms on such limitations.

ISSUE 2

Should the Agreement restrict a party from bringing a dispute as to the interpretation of the Agreement or the proper implementation of the Agreement to the forum of its choice? (General Terms and Conditions, Section 8)

MCI position: No. The parties should not be required to relinquish their right to bring disputes to a court or other forum that has jurisdiction to hear the case.

BST position: This Authority or the FCC should resolve disputes between the parties for matters that are within the Authority's or the FCC's expertise or jurisdiction. For matters that lie outside such expertise or jurisdiction, the parties should be able to bring disputes to a court of law.

9. BellSouth requests the Authority to foreclose jurisdiction of the state and federal courts to resolve disputes under the Agreement. To the extent that the courts have such jurisdiction, it arises under federal and state constitutions and statutes. Although parties might agree not to litigate disputes in the courts, it would not be proper for a state public service commission to attempt to limit courts' jurisdiction, nor indeed do state commissions have the authority to do so. The Authority should reject BellSouth's invitation to foreclose MCI's constitutional and statutory rights to enforce this Agreement in court or any other forum that has jurisdiction if it chooses to do so.

ISSUE 3

What rates, terms, and conditions relating to enterprise market loops, and dedicated transport should be incorporated into the Agreement? (Attachment 2, Sections 1.1.1, 1.13.5, 1.11.1, 2 1 2 1, 2.1.2 7, 2 1 5, 2.3.2 5, 2.3.2.7, 2.3.2.8, 2 3.6, 2.3.8, 2.3.11, 2.3.9, 5, 5.1.1, Pricing Attachment.)

MCI position: BellSouth should be required to provide enterprise market loops and dedicated transport UNEs and provide rates in the Agreement.

BST position: The only issue in dispute between the parties is the rates that apply to high capacity loops and transport post-*TRRO*. The Authority does not have jurisdiction to establish rates in unimpaired wire centers, and, for impaired wire centers, the rates

governing will be the Authority's TELRIC-ordered rates. Thus, to the extent MCI is seeking to have this Authority establish rates for high capacity loops and transport in unimpaired wire centers, the Authority should refuse to hear this issue because it has no jurisdiction to make such a finding.

10. BellSouth should be required to provide enterprise market loops (high capacity loops such as DS1 and DS3 loops) and dedicated transport UNEs, when MCI follows the self-certification procedures of FCC Rule 51.318, at TELRIC rates listed in the Agreement. Despite its clear obligation, BellSouth has removed from the network element pricing attachment all rates for enterprise loops and dedicated transport UNEs. The Authority should require BellSouth to include those rate elements and rates previously established by the Authority in the network element pricing attachment to the Agreement.

NETWORK ELEMENTS

ISSUE 4

With regard to the rates for elements, facilities and services:

A) If a rate element for a Service provided for in the Agreement is discovered as missing, should the Authority require BellSouth to provide the Service requested by MCI at BellSouth's reasonable estimate of an appropriate rate until the rate, necessary for the provision of the Service is incorporated into the Agreement by amendment?

B) For elements, facilities, or services identified in Attachment 2, should specific rates be set forth in Exhibit A to Attachment 2 or should BellSouth be permitted to refer to its tariff for rates?

(Attachment 2, Section 1.2, Attachment 2, Exhibit A.)

MCI position: A) Yes. BellSouth should not be able to avoid its obligation to provide a Service just because a rate has not been included in the Agreement.

B) Specific rates should be set forth in Exhibit A to Attachment 2. BellSouth should be prohibited from incorporating by reference rates found in a tariff, because BellSouth can unilaterally modify those rates.

BST position: A) No. If the Agreement does not include the rates, terms, and conditions for a service requested by MCI, the parties must execute the appropriate amendment with the agreed-upon rates, terms, and conditions. Providing services at an "estimate" would lead to confusion and potential disputes should the parties disagree on the estimate, and would require BellSouth to provide a service without the assurance of payment. Moreover, MCI should not be able to force BellSouth to provide service at estimates due to its inability to timely execute contract amendments.

B) BellSouth should be able to reference its tariffs for rates. MCI can object to any proposed tariff modifications in accordance with state commission procedures.

11. Under section 252 of the Act, BellSouth is obligated to provide unbundled network elements, facilities and services to CLECs. If a rate for an element, facility, or service is discovered as missing, BellSouth should be required to provide a reasonable estimate of the appropriate rate until an agreed-upon rate is incorporated by amendment into the Agreement. BellSouth should not be allowed to avoid its obligation to provide an element, facility or service simply because the rate has not been included in the Agreement.

12. Further, the specific rates for elements, facilities, or services identified in Attachment 2 should be set forth in Exhibit A to the Attachment. In a number of instances, BellSouth proposes to incorporate rates from its tariffs. MCI objects to BellSouth's proposal because its tariff rates are not cost-based and in any event BellSouth

unilaterally may change such rates by filing tariff revisions with the Authority. In addition, incorporation of tariffs into an interconnection agreement will lead to conflicting terms and conditions for service, billing and payment. Services purchased under an interconnection agreement should be governed by rates, terms, and conditions contained in the interconnection agreement, and services purchased under a tariff should be government by rates, terms, and conditions contained in the tariff.

ISSUE 5

What loop types must BellSouth provide under the Agreement? Specifically, with the exception of UCL-long, must BellSouth provide all loop types currently provided by BellSouth? (Attachment 2, Section 2 1.1, Pricing Attachment.)

MCI position: BellSouth should be required to provide all loop types that it currently provides to MCI, except for the UCL-long. BellSouth has developed naming conventions for loop types that do not conform to any industry standard. MCI seeks to ensure that regardless of what BellSouth names its loops, MCI will continue to receive the same loop functionality as in the past.

BST position: No. Pursuant to Section 251, the interconnection agreement identifies the loop types and associated specifications that BellSouth will provide to MCI. BellSouth will provide these loop types and associated specifications regardless of the naming designation used. Thus, MCI's blanket language requiring BellSouth to provide "all loop types" is ambiguous and unnecessary.

13. BellSouth uses names for different loop types that are not found in the Act or the FCC's rules. To avoid any future disagreement about the scope of BellSouth's unbundling obligation, MCI has proposed the following language: "Except as otherwise expressly provided in this Agreement, it is the intention of the Parties that all Loop types currently provided by BellSouth are included in this Agreement." MCI's language is

necessary to cure any ambiguities that might arise because of BellSouth's naming conventions.

ISSUE 7

Should MCI be required to use more than commercially reasonable efforts to test and isolate the trouble to the BellSouth's network and have test documentation before calling BellSouth to initiate a trouble ticket? (Attachment 2, Section 2.1.9 , 2 1.9.3.)

MCI position: No. The agreement already contains a remedy if MCI reports a trouble and no trouble actually exists on BellSouth's portion of the network. Moreover, in some instances it is not practical for MCI to test and isolate the trouble.

BST position: As a precondition to BellSouth performing the work on a repair request submitted by MCI, MCI should isolate the trouble and have test documentation prior to sending in a trouble ticket. Further, MCI's offer to use "commercially reasonable" efforts to isolate troubles does not address BellSouth's concerns because what MCI considers to be "commercially reasonable" may not alleviate or address the potential of wasting resources when MCI asks BellSouth to fix a trouble that does not exist.

14. When an MCI customer reports a problem on its line, MCI attempts to determine if the problem is on its network before submitting a trouble ticket to BellSouth. If BellSouth receives a trouble ticket from MCI and subsequently finds no problem on its network, it charges MCI the rate for a "no trouble found" in accordance with the Agreement. (See Exhibit B, Attachment 2, § 2.1.9.3.) MCI has proposed language that would require MCI to use commercially reasonable efforts to test and isolate the trouble before submitting a trouble ticket to BellSouth. BellSouth demands that MCI use more

than commercially reasonable efforts, and would require that MCI successfully test and isolate a trouble before submitting a ticket to BellSouth. BellSouth contends that its charge for finding that no trouble exists on BellSouth's network is inadequate compensation for its efforts, and thus apparently wants MCI to be strictly liable for additional charges not specified in the Agreement. MCI should not be required to undertake more than commercially reasonable efforts to test and isolate troubles, and its language therefore should be adopted.

15. BellSouth also proposes that upon request it should be able to require MCI to submit documentation of the MCI test indicating a problem on the BellSouth loop. Such a requirement would turn an electronic process into a manual one and substantially slow the process of restoring service to customers, and should be rejected.

ISSUE 8

(A) What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist?

(B) What rate should apply when BellSouth is required to dispatch to an end user location more than once due to incorrect or incomplete information?

(Attachment 2, Sections 2.1.9.3, 2.1.9.4, Pricing Attachment.)

MCI position: BellSouth should be required to identify specific rates for these items and place them in the agreement. BellSouth should be prohibited from incorporating by reference rates found in a tariff, because BellSouth can unilaterally modify those rates.

BST position: (A) Because the trouble was not found to be on BellSouth's network, the trouble determination charge from the applicable tariff should apply. MCI can object to any proposed tariff modifications in accordance with state commission procedures.

(B) Because multiple dispatches were required because of incorrect or incomplete information by the CLEC, the trouble determination charge from the applicable tariff should apply.

16. BellSouth proposes to refer to its tariff for: (1) the rates for testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist; and (2) the rate when BellSouth is required to dispatch to an end-user location more than once due to incorrect or incomplete information. Forcing a CLEC to accept tariff rates for network elements and other services required under the Act would be inconsistent with the Act, which requires that interconnection agreements include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. 47 U.S.C. § 252. Congress explicitly required that the ILECs' interconnection, unbundling and resale obligations be captured in agreements that are negotiated or arbitrated, and ultimately approved by state commissions. Tariff rates are not based on the TELRIC standard and may be changed unilaterally by filing revised rates with the Authority. In contrast, rates set forth in an interconnection agreement only may be changed by agreement of the parties or though the change of law process that has been adopted by the parties. For these reasons, BellSouth's proposal to incorporate tariff rates by reference should be rejected, and instead the rates should be specified in the Agreement.

ISSUE 9

A. What rate should be applicable for the Bulk Migration process?

B. Should BellSouth be required to offer the Bulk Migration process for migrations of MCI customers to third-party provided switching?

(Attachment 2, Section 2.1.12.1.)

MCI position: (A) BellSouth must establish discounted rates for the Bulk Migration process to reflect the increased efficiencies of conducting migrations on a bulk basis and comply with the "cost-based" UNE pricing requirements.

(B) Yes. The physical process in such migrations is identical to migrations of MCI customers to MCI-provided switching.

BST position: (A) Bulk Migrations are nothing more than multiple single, hot cuts. Thus, the Authority's TELRIC-ordered hot cut rate should apply to Bulk Migrations.

(B) No. Any involvement of another party, in addition to BellSouth and MCI, is clearly not "identical" to migrations that involve only BellSouth and MCI.

17. BellSouth's UNE non-recurring charges were established without taking into account the efficiencies that may be gained through a bulk migration process. Accordingly, BellSouth should be required to establish a discounted rate for its bulk migration process that reflects its inherent efficiencies.

18. BellSouth should be required to provide its bulk migration process when an MCI customer is migrating to an MCI's third-party wholesale switch provider that sends orders on MCI's behalf. The physical process for such migrations is the same as for migrations of MCI customers to MCI-provided switches and therefore BellSouth's refusal to use its bulk migration process for such migrations is unreasonable and discriminatory.

ISSUE 10

(A) Should the Agreement contain provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

(B) Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged tap?

(Attachment 2, Section 2.5.2, 2.5.3, 2.5.4, Pricing Attachment)

MCI position: (A) No. Customers who are more than 18,000 feet from a central office may wish to receive DSL service even if the service level is below optimal levels. Moreover, MCI may wish to provide other services requiring electrical connectivity that can be provided more than 18,000 feet from a central office.

(B) MCI should be able to order the removal of any length of bridged tap. Unnecessary bridged tap can interfere with services that the customer wishes to receive from MCI.

BST position: (A) This issue is encompassed within Issue 26 of the Generic Proceeding and thus the Authority's ruling on that issue should apply here. Nevertheless, BellSouth's position is as follows: No, Paragraph 643 of the *TRO* provides that "[l]ine conditioning is properly seen as a routine network modification that incumbent LECs regularly perform to provide xDSL services to their own customers. . . . incumbent LECs must make the routine adjustments to unbundled loops to deliver services at parity with how incumbent LECs provision such services for themselves." Because BellSouth does not routinely remove load coils on copper loops longer than 18,000 feet, BellSouth is not obligated to provide this type of line conditioning to MCI.

(B) BellSouth's obligations concerning bridged tap are similar to its obligations concerning the removal of load coils. BellSouth is only obligated to remove bridged tap on copper loops provided to MCI when it would regularly perform such removal for its own customers. However, BellSouth is willing to provide MCI with what it has agreed to with the CLEC Collaborative for the removal of bridged taps. That is, BellSouth will remove bridged tap in excess of 6,000 feet at no charge; between 2500 and 6000 feet at TELRIC; and between 0 and 2500 feet at special construction prices.

19. The FCC's line conditioning rules obligate BellSouth to perform line conditioning on loops in excess of 18,000 feet in length. Section 51.319(a)(1)(iii) of the FCC's rules states:

> The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop.

The FCC's rules further define "line conditioning" to include the removal of load coils and bridged tap. *See* 47 C.F.R. § 51.319(a)(1)(iii)(A). Nothing in the FCC's rules limits BellSouth's line conditioning obligations to loops of certain lengths or to cases where BellSouth would routinely condition the loop for its own customers. The rates for line conditioning must be set in accordance with the FCC's TELRIC rates. *See* 47 C.F.R. § 51.319(a)(1)(iii)(B).

20. MCI should be able to order the removal of any length of bridged tap. Unnecessary bridged tap can interfere with services that the customer wishes to receive from MCI. BellSouth's position during negotiations was that BellSouth ignores the length of bridged tap on a loop when measuring the length of a loop, even though the bridged tap must be taken into account when calculating the loop length for some services such as DSL. Under BellSouth's proposal, MCI could not order bridged tap removal on a 15,000-foot loop with 4,000 feet of bridged tap (because BellSouth would consider the loop length to be adequate for typical advanced services). Industry standards, however, provide that total loop length *including bridged tap* should be

measured when determining loop length for DSL purposes. Thus, BellSouth is refusing to remove bridged tap on loops for which industry standards indicate the bridged tap should be removed.

ISSUE 11

Under what terms and conditions shall the parties transition loops and transport that no longer will be provided as UNEs pursuant to Section 251 of the Act? (Attachment 2, Sections 2.1 7.12, 2 1.7.12.1, 6.2 4, 6 2.5, 6.2.11, 6.2.11., 6 2.12.2, 6 2 12.6.1.)

MCI position: MCI should not be required to provide a spreadsheet of transition circuits on a date that precedes the effective date of the Agreement. MCI should not be bound by a list of offices as to which BellSouth unilaterally asserts that MCI is not impaired for high capacity loops and transport.

BST position: The only issues in dispute relating to the process for the transition of elements are those discrete issues identified by BellSouth in its Issue Statement. To the extent the Generic Proceeding addresses these discrete issues, the Authority's ruling in the Generic Proceeding should govern. Nevertheless, BellSouth's position on these issues is as follows:

A) In the event this agreement is executed prior to December 9, 2005, MCI must submit a spreadsheet to BellSouth that identifies those former UNE services in its Embedded Base that it is terminating or converting to other BellSouth services.

B) BellSouth will identify the subject services and transition them to other BellSouth services and MCI must pay all applicable nonrecurring charges associated with BellSouth's efforts.

C) Yes, as the list of unimpaired wire centers is updated pursuant to carrier notification letters.

21. BellSouth seeks to impose improper terms for high capacity loops and transport as to which MCI is not impaired under the FCC's new unbundling rules. BellSouth proposes that MCI be required to provide a spreadsheet of transition circuits by December 9, 2005. It is likely that the parties will not have executed the Agreement by December 9, 2005, thereby making that specific date an impossible condition to meet, and thus putting MCI in a position of potentially breaching the contract as it signs it.

22. BellSouth also proposes that it compile a list of offices in which MCI is not allowed to order high capacity loops and transport as UNEs. MCI desires to make clear that such a list, while it may be helpful, is not binding on MCI. The FCC sets forth a specific self-certification procedure in its rules. (*See* 47 C.F.R. § 51.318.) To submit an order for a UNE DS-1 or DS-3 loop, MCI must self-certify that the facility qualifies for unbundling. If BellSouth seeks to challenge that certification, it may raise the issue by using the dispute resolution process in the Agreement, but BellSouth must provision the loop before bringing the dispute. The same ordering rules that apply to high-capacity loops also apply to dedicated transport. There is nothing in the FCC's rules that requires BellSouth to create a list, nor is there a requirement for CLECs such as MCI to be bound by such a list. Accordingly, BellSouth's attempt to impose such obligations that are contrary to the FCC's new unbundling regime should be rejected.

ISSUE 12

Should MCI be required to indemnify BellSouth for BellSouth's own negligent act committed in conjunction with BellSouth's provision of PBX Locate Service? (Attachment 2, Section 7 4.2 2.)

MCI position: No BellSouth should be responsible for its own torts and

the parties already have agreed to comprehensive indemnification language in the General Terms and Conditions section.

BST position: In conjunction with its obligation to provide 911 service to MCI as a UNE, BellSouth voluntarily makes available to MCI its PBX Locate Service, which is identical to BellSouth's retail product, Pinpoint. The Pinpoint product allows BellSouth's retail customers to identify for emergency personnel the locale of an incoming 911 call in a campus/hotel/hospital environment. Because this is a retail offering that BellSouth provides to its wholesale customers through PBX Locate, MCI may purchase the product but only at the same terms and conditions that apply to BellSouth's retail customers.

23. BellSouth has agreed to provide its 911 PBX Locate Database Capability to MCI. MCI's end user or end user's database management agent will provide the end user's PBX station numbers and corresponding address and location data to BellSouth's 911 database vendor, who will maintain it in BellSouth's database. BellSouth proposes that MCI indemnify BellSouth for BellSouth's own negligence committed in conjunction with the provision of this service. BellSouth should be responsible for its own torts. The parties have already agreed to comprehensive indemnification language in section 5 of the General Terms and Conditions of the Agreement, and there is no reason for a special carve-out for this service. Furthermore, the Authority should not impose an indemnification obligation on MCI that MCI is not willing to undertake.

INTERCONNECTION

ISSUE 15

Should the parties pay each other for two-way interconnection facilities based on their proportionate share of originated traffic or on a 50-50 basis? (Attachment 3, Section 4.10, Pricing Attachment)

MCI position: The parties should pay each other based on their proportionate share of traffic. The FCC has ruled that parties are prohibited from assessing charges on other carriers for traffic that the party originates, and thus an arbitrary 50-50 split is not appropriate.

BST position: BellSouth has no ability to proportionally bill on a mechanized and monthly basis. Thus, the parties should initially split the costs of two-way interconnection trunk facilities on a 50-50 basis and then manually true-up the billings on a recurring six-month basis.

24. Interconnection facilities are the equipment and lines that carry traffic between carriers' networks. Interconnection trunks are the pathways that ride over interconnection facilities. Interconnection traffic can be transmitted over one-way trunks that carry traffic only from one party to the other, or over two-way trunks that carry traffic in both directions. Under FCC Rule 51.703(b), a local exchange company may not assess charges on other carriers for traffic that the local exchange carrier originates. Thus, for interconnection facilities with two way trunks, the recurring and nonrecurring charges must be borne by the parties in accordance with the percentage of their originating traffic. MCI therefore has proposed language that would require the parties to compensate each other for facilities with two-way trunks based on their proportion of originating traffic. BellSouth proposes to split the charges 50-50 and require a party seeking proportionate billing to request traffic statistics on a per-trunk-group basis semiannually and then request billing adjustments based on the statistics. BellSouth's proposed language should be rejected because it would require an onerous process to be undertaken time after time as a precondition to proportionate billing. As a practical matter BellSouth typically originates far more of the traffic exchanged between the parties than MCI. BellSouth's scheme is designed to overcompensate BellSouth in the

first instance and then make it difficult for MCI to obtain reimbursement for its overpayments and to prevent overpayment going forward. MCI's language follows the FCC's rules, is straightforward, and avoids the administrative quagmire BellSouth seeks to impose. Accordingly, MCI's language should be adopted.

ISSUE 16

Should trunk groups for operator services, directory assistance and intercept be established pursuant to this Agreement or BellSouth tariffs? (Attachment 3, Section 4 14.3)

MCI position: Such trunk groups should be established pursuant to this Agreement and any charges associated with them should be at TELRIC. These trunk groups are being used for local interconnection and therefore BellSouth's access tariff should not apply.

BST position: MCI uses trunk groups for operator services, directory assistance and intercept to access services that BellSouth is not required to provide at TELRIC. Consequently, MCI should pay the rates established in BellSouth's tariffs for these services. And, to the extent that MCI is requesting that the Authority establish another rate for these services, the Authority is without jurisdiction to do so because the trunk groups at issue are not a 251 obligation.

25. MCI is entitled to interconnect with BellSouth at any technically feasible point on its network. *See* 47 U.S.C. § 251(c)(2). MCI thus is entitled to establish interconnection trunks to the operator services and directory assistance platforms on BellSouth's network. Such interconnection trunks are required to be provided at TELRIC rates. 47 C.F.R. § 51.505. MCI therefore has proposed language that would require BellSouth to provide such interconnection trunks at the Authority-ordered rates provided in the Agreement. BellSouth, on the other hand, would require MCI to order these trunks out of BellSouth's tariffs, which do not offer TELRIC rates and in any event

are subject to change by BellSouth at any time. Because BellSouth fails to recognize that MCI is entitled to order such interconnection trunks under the Act at TELRIC rates, its proposed language must be rejected and MCI's language should be adopted.

ISSUE 17

A) Should the definition of local traffic require origination and termination of traffic within the same LATA?

B) Should traffic be jurisdictionalized based on the actual physical location of the calling and called parties, or based on the originating and terminating NPA/NXXs?

C Should local traffic include optional extended calling plans as set forth in the originating party's tariff, or only non-optional extended calling plans (such as EAS)?

(Attachment3, Section 7.1)

MCI position:

A) Each party should be free to define its local service area, subject to Authority approval.

B) The jurisdiction of traffic should be based on the NPA/NXXs of the called and calling parties rather than their physical locations.

C) No. Optional extended calling plans provide flat-rated toll service and such calls should not be considered local.

BST position:

A) InterLATA traffic should not be considered Local Traffic. Instead, Local Traffic should be defined as any telephone call that originates in one local calling area within a LATA and terminates within the same local calling area within the same LATA as such local calling area is defined in the originating party's tariff. Local Traffic also includes any cross boundary, intrastate, interLATA or interstate, interLATA calls established as a local call by the ruling regulatory body.

B) Traffic should be jurisdictionalized based on the physical endpoints of the call.

C) Yes. Optional extended calling plans, like Area Plus, should be included in local traffic.

26. The definition of "local traffic" is a fundamental building block of the Agreement. MCI has proposed language that would make clear that local traffic is traffic with an originating NPA/NXX from one exchange and a terminating NPA/NXX from either the same exchange or some other local calling area associated with the originating exchange on a non-optional basis. MCI's language appropriately addresses the three subparts of this issue. First, MCI's language does not limit the parties' ability to establish their local calling areas. BellSouth's proposal that local calling areas be contained within LATA boundaries seeks to inject an artificial restraint with no rational basis. BellSouth's proposed restriction would serve no purpose other than to limit MCI's ability to create new products and services that would benefit consumers. Second, MCI's language calls for jurisdiction of traffic to be based on the NPA/NXX's of the calling and called parties. This position is addressed in Issue 39 below. Third, MCI's proposed language does not permit parties to include optional extended calling plans because such plans in reality offer flat-rated toll service. As a practical matter, moreover, there is no way for the originating carrier to know whether the called party is in the terminating carrier's extended calling plan. MCI's language therefore should be adopted.

ISSUE 18

Should IP/PSTN and PSTN/IP/PSTN traffic be excluded from the definition of intraLATA traffic? (Attachment 7 2, 7.5.1)

MCI position: Yes. Such traffic undergoes a net protocol conversion or features enhanced services and therefore should not be included in the definition of intraLATA traffic. The FCC has ruled that such traffic is interstate in nature.

BST position: No. The FCC determined in the Vonage Order (04-267) that this type of traffic is interstate in nature subject to the FCC's jurisdiction. Thus, the Authority has no jurisdiction to address this issue in a Section 252 agreement. If and until the FCC rules otherwise, the physical endpoints of the call determine compensation. Thus, to the extent IP/PSTN and PSTN/IP/PSTN traffic terminates within the same LATA but within two different local calling areas, such traffic should be treated as intraLATA toll traffic. Likewise, if such traffic terminates within the same local calling area within the same LATA, this traffic would be considered Local Traffic.

27. This issue concerns intercarrier compensation for facilities and terminating traffic with respect to certain kinds of traffic, including voice over internet protocol ("VoIP") traffic that is carried in part over the public switched telephone network ("PSTN").[3] The parties have agreed that such traffic falls into two categories that they have labeled "IP/PSTN" traffic and "PSTN/IP/PSTN" traffic. IP/PSTN Traffic is defined in the Agreement as "a subset of IP Enabled Services that undergoes a Net Protocol Conversion . . . between the calling and called parties." A call originated on a VoIP modem and terminated on a circuit switch would be an example of such traffic. PSTN/IP/PSTN Traffic is defined in the Agreement to be "a subset of IP Enabled Services that is not IP/PSTN Traffic and that features enhanced services that provide customers a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information." A call originated by a circuit switch, then converted to internet protocol and enhanced with additional features before being terminated on a circuit switch would be an example of such traffic.

[3] This issue does *not* concern VoIP traffic that does not touch the PSTN, nor does it address traffic that is converted from ordinary voice traffic to internet protocol and back to ordinary voice traffic, when the IP conversion does not feature enhanced services

28. The FCC has determined that IP/PSTN traffic is jurisdictionally interstate[4] and that PSTN/IP/PSTN traffic is distinguishable from ordinary voice traffic,[5] and thus presumably is subject to the same treatment as IP/PSTN traffic. Consistent with the FCC's rulings, MCI has proposed language that would exclude IP/PSTN and PSTN/IP/PSTN traffic from the definition of intraLATA traffic in the Agreement. Despite those rulings, BellSouth proposes that such traffic not be excluded from that definition. This Authority should adhere to the FCC's rulings and adopt MCI's language.

ISSUE 19

What intercarrier compensation regime should be used for IP/PSTN and PSTN/IP/PSTN traffic? (Attachment 3, Section 7.5.1.)

MCI position: Such traffic closely resembles ISP bound traffic so the same rate elements for exchanging ISP bound traffic should apply.

BST position: No. The FCC determined in the Vonage Order (04-267) that this type of traffic is interstate in nature subject to the FCC's jurisdiction. Thus, the Authority has no jurisdiction to address this issue in a Section 252 agreement. If and until, the FCC rules otherwise, the physical endpoints of the call determine compensation.

29. Like Issue 18, this issue concerns intercarrier compensation for facilities and terminating traffic with respect to certain kinds of traffic, including VoIP traffic, that is carried in part over the PSTN, which the parties have classified as IP/PSTN and PSTN/IP/PSTN traffic, as discussed above. The FCC has determined that IP/PSTN

[4] *In Re Vonage Holdings Corp Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No 03-211, Memorandum Opinion and Order FCC 04-267 (rel Nov 12, 2004) ("*Vonage Order*")

[5] *In Re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No 02-361, Order, FCC 04-97 (rel Apr 21, 2004) ("*AT&T Order*")

traffic is jurisdictionally interstate[6] and that and PSTN/IP/PSTN traffic is distinguishable from ordinary voice traffic,[7] and thus presumably subject to the same treatment as IP/PSTN traffic, but the FCC has not decided how such traffic should be treated for intercarrier compensation purposes. MCI proposes that IP/PSTN and PSTN/IP/PSTN traffic be treated in the same manner as ISP bound traffic, which they resemble. Once the FCC specifies how IP/PSTN and PSTN/IP/PSTN traffic are to be treated, the Agreement can be amended to reflect the new rules through the change of law process.

ISSUE 21

What rates is MCI entitled to charge BellSouth, and what records is BellSouth required to provide MCI, for intraLATA toll traffic originated by an ICO, carried over BellSouth's network and then terminated by MCI, when (i) the ICO is on a Primary Carrier Plan; or (ii) BellSouth notifies MCI that the ICO is not on a Primary Carrier Plan?

(Attachment 3, Section 7.5.4.)

MCI position: When an ICO is on a Primary Carrier Plan, MCI is entitled to bill BellSouth the terminating access rates from its intrastate tariff, and BellSouth should be required to send appropriate billing records if MCI is not able to bill for such traffic using its own switch records. BellSouth should be required to notify MCI if an ICO is not on a Primary Carrier Plan and when that is the case BellSouth should provide MCI with tandem billing records for such traffic that would enable MCI to bill the ICO MCI's portion of the access services provided.

BST position:[8]

A) MCI should bill BellSouth pursuant to EMI 110101 records and BellSouth's primary carrier plan ICO ratios at the rates set forth in MCI's intrastate tariffs. MCI should be prohibited from billing BellSouth from its own switch recordings

[6] *VonageOrder*
[7] *AT&T Order*
[8] MCI has recited BellSouth's most recent position on this issue, which refers to the issue as BellSouth proposed to frame it, and does not correspond to MCI's statement of the issue

because such recordings do no provide for the local calling area of the ICO. Thus, using MCI records could result in MCI billing BellSouth switched access when BellSouth is not the toll provider or when such traffic is local in nature.

B) In such a scenario, the traffic in question would be treated like transit traffic and subject to the applicable provisions set forth in the agreement.

C) No. For the reasons stated in (A), BellSouth will provide MCI with the appropriate EMI records such that MCI can bill BellSouth.

D) Yes. BellSouth will provide a new list of PCP ICO's any time an ICO adopts an alternative to the PCP.

30. This issue concerns billing for intraLATA toll calls originated by an independent telecommunications company ("ICO"), routed over some portion of BellSouth's network, and terminated to an MCI customer. If BellSouth and the ICO are parties to a primary carrier plan ("PCP"), BellSouth serves as the intrastate toll provider for the ICO and the PCP establishes how toll revenues are to be apportioned between those two parties. MCI has proposed language that makes clear that when BellSouth terminates such traffic to MCI, MCI is entitled to bill BellSouth terminating access charges based on MCI's intrastate access tariff. BellSouth's proposed language would enable BellSouth to pay MCI based on a formula related to its PCP with the ICO. Because MCI is providing terminating access services to BellSouth in this scenario, BellSouth must comply with MCI's intrastate access tariff. BellSouth also should be required to provide MCI with billing records that enable MCI to bill BellSouth for this traffic if MCI is unable to bill using its own switch records.

31. When BellSouth and the ICO do not have a PCP, the ICO typically sends its intrastate traffic to a BellSouth access tandem that routes the traffic to the terminating carrier. MCI has proposed language that would require BellSouth to notify MCI when an ICO is not on a PCP and to provide MCI with tandem billing records for such traffic that

would enable MCI to bill the ICO MCI's portion of the access services provided. BellSouth should be required to provide these billing records as the tandem provider, and accordingly MCI's language should be adopted.

ISSUE 22

A) Should FX-like services offered by MCI to its customers be treated as local traffic or switched access traffic for intercarrier compensation purposes?

B) If they should be treated as switched access traffic, how will such traffic be identified for purposes of the separate treatment?

(Attachment 3, Sections 7.5.4, 7.5.5.)

MCI position:

A) FX-like services should be treated as local consistent with industry standards and the FCC's decision in the Virginia arbitration.

B) Because these calls should be treated as local, the second part of this issue need not be addressed.

BST position: This issue is not about FX-like services. Rather, it is about virtual NXX and whether MCI can avoid paying access charges for virtual NXX calls. InterLATA virtual NXX services should be treated as access for purposes of intercarrier compensation if the end points of the call dictate such.

32. Jurisdiction of traffic is properly determined by comparing the rate centers associated with the originating and terminating NPA/NXXs for any given call, not the

physical location of the end users. Comparison of the rate centers associated with the calling and called NPA/NXXs is consistent with how the jurisdiction of traffic and the applicability of toll charges are determined within the industry today. In ruling in favor of CLECs on this issue in the Virginia arbitration, the FCC rejected Verizon's position that called for the rating of VNXX calls based on their geographic end points.[9] Thus, both industry practice and FCC precedent establish that non-ISP VNXX traffic should be treated as local for purposes of intercarrier compensation. MCI's proposed language incorporates this approach and should be adopted.

ISSUE 23

How should IP/PSTN and PSTN/IP/PSTN traffic be categorized for purposes of determining compensation for interconnection facilities and termination of traffic? (Attachment 3, Sections 7 6.3, 7 6.4,7 6.5, 7.7, MCI Factors Guide, 1.1.4, 2 2.2, 2.6 1, 2.7, and 2 7.1.)

MCI position: For purposes of determining compensation for interconnection facilities, IP/PSTN and PSTN/IP/PSTN traffic should be placed in the same category as local traffic, just as ISP bound traffic is put in the same category. For purposes of determining compensation for termination of traffic, IP/PSTN and PSTN/IP/PSTN traffic should be treated in the same manner as ISP-bound traffic.

BST position: No. The FCC determined in the Vonage Order (04-267) that this type of traffic is interstate in nature subject to the FCC's jurisdiction. Thus, the Authority has no jurisdiction to address this issue in a Section 252 agreement. If and until the FCC decides otherwise, the physical end points of the call determine jurisdiction. Thus, unless and until the FCC determines otherwise in its open dockets, the end points of the call and BellSouth's current factors address compensation for facilities and usage for IP/PSTN and PSTN/IP/PSTN traffic.

[9] *In re Petition of WorldCom, Inc et al*, CC Docket Nos. 00-218, 00-249 and 00-251, Memorandum Opinion and Order, DA 02-1731 ¶ 301 (rel July 17, 2002)

33. Parties compensate each other for the use of interconnection facilities based on the weighted average of the minutes of use of the traffic types carried over the facility in question. The parties have agreed that a percent interstate usage E ("PIUE") factor should be used to capture all interstate toll traffic carried by MCI for this purpose.[10] If 10% of traffic over the facility is MCI's interstate toll, for instance, the PIUE would be 10% and that percentage would be applied to the charge for the facility in BellSouth's federal access tariff. For intrastate traffic, a Percent Local Facilities ("PLF") factor is used to distinguish local, access and ISP traffic from MCI's own intraLATA toll traffic. Thus, moving forward with the preceding example, if the PLU were 55%, then that percentage would be applied to the interconnection agreement charge for the facility and 35% would be applied to the charge from the intrastate access tariff.

34. The parties disagree as to how IP/PSTN and PSTN/IP/PSTN traffic should be categorized for purposes of determining compensation for interconnection facilities. MCI has proposed that it be put in the same category as local, access and ISP bound traffic, because IP/PSTN and PSTN/IP/PSTN traffic are most closely analogous to ISP bound traffic. BellSouth contends that IP/PSTN and PSTN/IP/PSTN be treated as voice traffic, and be classified based on the end points of the call. Because the FCC has made clear that IP/PSTN and PSTN/IP/PSTN do not conform to these traditional voice classifications, BellSouth's proposal should be rejected and MCI's language adopted.

35. With respect to intercarrier compensation, the parties agree that a Percent Interstate Usage ("PIU") factor should be used to determine the amount of traffic subject

[10] If MCI is providing access services to another carrier, including an MCI affiliate, the traffic is considered access traffic rather than interstate toll traffic for purposes of PIU-E Thus if MCI is not itself carrying the interstate toll traffic, the PIUE would be zero.

to interstate access charges. The parties also agree that a Percent Local Usage ("PLU") factor should be used to distinguish intraLATA toll from local traffic, with intraLATA toll being billed at the intrastate access rate and local traffic being subject to reciprocal compensation. MCI proposes to adopt an additional factor – the Percent Enhanced Usage ("PEU") factor -- that would capture IP/PSTN and PSTN/IP/PSTN traffic, which would be treated as ISP bound traffic for intercarrier compensation purposes. Because the FCC has already made clear that IP/PSTN and PSTN/IP/PSTN traffic are not subject to the traditional voice classifications, this approach is superior to BellSouth's proposal that this traffic be treated as voice traffic. Once the FCC establishes intercarrier compensation rules for this traffic, the Agreement can be conformed to the new rules through the change of law process.

ISSUE 24

How will SS7 charges be imposed on the parties? (Attachment 3, Section 7.8.1.)

MCI position: BellSouth has proposed charges for SS7 messages, but has not proposed language regarding such charges. Absent a specific proposal, neither party should charge the other for SS7 messages.

BST position: The applicable SS7 charges (i.e., either intrastate or interstate) are set forth in BellSouth's tariff.

36. BellSouth has proposed that the parties charge each other for the SS7 signaling messages that they send each other when a call is set up, maintained, and taken down. MCI prefers not to establish such charges because regardless of which party's network originates the call, the number of SS7 messages sent back and forth is roughly equal. Moreover, BellSouth has not proposed charges to be incorporated in the

interconnection agreement, but instead proposes to rely on the rates established in BellSouth's tariff. SS7 charges must be cost-based and to the extent they are adopted at all must be included in the Agreement, not merely in a tariff that is subject to change. Finally, BellSouth has not proposed any language describing how SS7 charges would be applied and calculated. Because BellSouth has not proposed SS7 rates for inclusion in the Agreement, such rates should not be adopted.

ISSUE 25

Should a transiting party have to pay the terminating party intercarrier compensation if the transiting party is unable to provide the terminating party the records necessary for the terminating party to bill the originating third party? (Attachment 3, Section 7.10 1)

MCI position: Yes. If the transiting carrier cannot provide the terminating carrier with adequate records, it should bear the responsibility of paying the terminating carrier and seeking reimbursement from the originating carrier.

BST position: As the transiting party, BellSouth cannot guarantee that the originating third party carrier will deliver traffic to BellSouth in such a way that MCI is able to identify and bill such originating third party in all circumstances. BellSouth is willing to provide this non-251 service to MCI and is willing to work cooperatively with MCI, but BellSouth cannot guarantee payment to MCI when BellSouth does not even get the records from the originating carrier.

37. "Transit traffic" is traffic that is switched or transported by one party to the other party for delivery to a third party's network, or traffic originating on a third party's network that is switched or transported by one party to the other Party for termination. Such traffic is governed by the Act. *See* 47 U.S.C. § 251. The Georgia Public Service Commission, in Docket No. 16772-U, did not approve BellSouth's request

for a declaratory ruling that BellSouth does not owe compensation to terminating carriers for transit traffic. Instead, the Georgia Commission has ordered that BellSouth provide CLECs with the same usage information that BellSouth had previously agreed to provide ICOs. That information includes CIC and OCN identification, billing contact names and billing addresses, in addition to industry standard call detail records identifying the originating carrier and the minutes-of-use for each such carrier. The Georgia Commission also has directed BellSouth to provide to CLECs the same assistance, at no charge, in resolving billing disputes that BellSouth had previously agreed to provide to the ICOs. BellSouth should be required to provide such information and assistance, and should be required pay MCI's charges for terminating the traffic if BellSouth fails to do so.

ISSUE 26

Is BellSouth obligated to act as a transit carrier? If so, what is the appropriate transit rate? (Attachment 3, Section 7.10 2, Pricing Attachment.)

MCI position: BellSouth is obligated to act as a transit carrier. MCI should not be required to negotiate interconnection agreements with all third party carriers, which would be highly inefficient. Further, MCI should not be liable to BellSouth for termination costs BellSouth has agreed to pay a third party carrier.

BST position: No. BellSouth has no section 251(c)(2) duty to provide transit service and thus MCI should pay BellSouth a non-TELRIC rate for this transit service. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery

of MCI's transit traffic, MCI should reimburse BellSouth for all charges paid by BellSouth.

38. Under the Act, BellSouth is obligated to interconnect "indirectly" and to exchange such transit traffic. *See* 47 U.S.C. § 251(a), (b). The Act does not require that MCI execute an interconnection agreement with all carriers that originate or terminate transit traffic. The Act does require the rates for transit traffic to be cost-based and determined pursuant to the FCC's TELRIC pricing rules. Accordingly, BellSouth's proposed language, which would require MCI to reimburse BellSouth for any charges or costs for the delivery of transit traffic, is inappropriate. Moreover, MCI is not a party to agreements that BellSouth has entered into with third parties, and should not be subject to the rate regimes to which BellSouth has acceded in those agreements.

COLLOCATION

ISSUE 27

Under what circumstances, if any, may BellSouth disconnect MCI's collocated equipment or facilities based on (i) the alleged degradation of, interference with or impairment of BellSouth's or another carrier's services, (ii) the alleged endangerment of another party's property, (iii) the alleged compromise of the privacy of communications, or (iv) the alleged concern that the equipment or facilities might injure or cause death to anyone in the Central Office? What standards apply to the UNEs provided by BellSouth in its collocation spaces? (Attachment 4, Sections 5.18, 5.18.1 and Attachment 2, Sections 2.11.1, 2 11.1 2, 2.11.1 3, 2.11 2.)

MCI position: BellSouth has proposed language that would give it nearly unbridled authority to disconnect MCI's collocated equipment and facilities. Electronic transmissions necessarily cause some degree of interference and it is therefore inappropriate for BellSouth to have unlimited discretion as to how much interference will be allowed. So long as MCI's collocated equipment and facilities operate within explicit national standards or applicable law,

disconnection should not be authorized, except in the event of a threat of loss of life or damage to property.

MCI's language appropriately and fairly requires that BellSouth shall not knowingly deploy or maintain facilities or equipment that, in excess of that permitted by national standards or law, interferes with or impairs service over MCI's facilities, or which causes damage to MCI's plant. Nor should BellSouth disconnect, remove or attempt to repair MCI's facilities, without its consent. MCI's proposed language, moreover, unlike BellSouth's collocation language, requires each party to reasonably notify the other of situations that may result in service problems.

BST Position:

A) The parties have already agreed that BellSouth will not knowingly interfere with or impair MCI's ability to provide service. MCI should be subject to this same obligation.

B) MCI should not be permitted to use any product or service provided under this Agreement that interferes with or impairs BellSouth's or another carrier's ability to provide service. If BellSouth reasonably determines that any equipment or facilities of MCI violates the provisions of this paragraph, BellSouth shall provide written notice to MCI and request that MCI cure the violation 48hours or, if such cure is not feasible, to commence curative measures within twenty-four (24) hours and exercise reasonable diligence to complete such measures as soon as possible thereafter. If MCI fails to do either, or if the violation is of a character that poses an immediate and substantial threat of damage to property or injury or death to any person, or any other significant degradation, interference or impairment of BellSouth's or another entity's service, then and only in that event, BellSouth may take such action as it deems necessary to eliminate such threat including, without limitation, the interruption of electrical power to MCI's equipment and/or facilities.

39. All collocated electronic equipment to some degree interferes with, degrades or impairs the transmissions and signals of other nearby electronic equipment. Consequently, the North Carolina Utilities Commission has approved language that

permits neither party to a collocation agreement to interfere or impair service in excess of that explicitly permitted by applicable law or national standards. See §5.1.1, Standard Offering, May 14, 2004, (revised in other respects, March 10, 2005), *In re Generic Collocation,* Docket No. P-100, Sub 133j.

40. MCI has agreed, for purposes of narrowing issues, that the Agreement may contain language that protects BellSouth's equipment and facilities. The issue is whether BellSouth should have the right to take curative action to disconnect MCI's collocated equipment when that equipment is operating within explicit national standards or applicable law. MCI proposes that BellSouth should not be able to do so. In contrast, BellSouth proposes language that would enable it to disconnect MCI's equipment when BellSouth deems it to "significantly interfere" with its facilities or equipment. BellSouth's proposed language would give it far too much discretion that would allow it to disconnect its competitor's service without reference to a specific standard, and it should therefore be rejected.

41. Facilities shared between carriers, such as through line sharing and line splitting arrangements, necessarily involve the potential ability to "compromise" the privacy of the content of a transmission, for example, through the testing of shared loop facilities. It is unreasonable for the collocation attachment to prohibit such "compromises" of the privacy of "communications routed through the premises," when such occur as authorized by law or tariff.

42. MCI acknowledges that BellSouth may need to interrupt power or other service to MCI's collocated equipment when there exists an immediate and substantial threat of loss of life or damage to property. In such cases, BellSouth should attempt to

notify MCI before interrupting service. BellSouth, however, advocates a nearly unbridled ability to unilaterally disrupt MCI's communications and damage MCI's equipment, including for any "violations" deemed by BellSouth to occur, without notice to MCI and without any liability except as to BellSouth's intentional torts.

43. For all purposes in the Agreement, including with respect to UNEs, MCI has proposed that BellSouth shall not knowingly deploy or maintain facilities or equipment which, in excess of that permitted by national standards or law, interferes with or impairs service over MCI's facilities, or which causes damage to MCI's plant. MCI believes that this language adequately addresses interference for all purposes. MCI proposes having one network interference section for the entire Agreement, but BellSouth refuses to accept this approach. BellSouth insists that a special network interference section for collocation should be included, and that only BellSouth should be protected by such language. BellSouth ignores the fact that either Party's network could interfere with the other's when both Party's equipment is housed in the same central office. BellSouth should not be permitted to protect itself from interference from MCI's equipment while leaving MCI completely unprotected from interference from BellSouth. Nor should BellSouth disconnect, remove or attempt to repair MCI's facilities, without the latter's consent. Finally, MCI's proposed language, unlike BellSouth's collocation language, requires each party to reasonably notify the other of situations that may result in service problems. For these reasons, MCI's proposed language in the network elements attachment should be adopted.

ISSUE 28

What is the applicable language, rates and rate structure for collocation, including power usage, in Tennessee? (Attachment 4, Sections 7.1.4 (and subparts), 8.2, 8.6, 8.6 (and subparts), 9.1, 9.6)

MCI position: Inconsistently with respect to its practice in other states in the region, BellSouth denies that MCI should be able to augment existing collocation arrangements, at intervals less than that for provisioning a new collocation arrangement. Also, since there is a specific Power Reconfiguration application fee, there should be specific reference to a power reconfiguration application in section 8.2. In addition, since the Authority has expressly recognized that the measurement of power usage may be done with meters, MCI proposes conforming language in section 8.6 (including subparts).. BellSouth's language regarding power usage (its proposed exhibit D) attempts to impose additional requirements that the Authority did not order, and which are unnecessary and burdensome. Finally, with regard to the section entitled "Nonrecurring charges," there is no firm order processing fee in Tennessee, as BellSouth concedes, and thus BellSouth's proposed language is unnecessary, confusing, and attempts to create a fee where none exists..

BST position: In addition to BellSouth's position as described, BellSouth proposes a new exhibit D to the attachment, for Tennessee-specific rates, terms and conditions.

44. MCI has requested that the interconnection agreement contain language enabling MCI to augment existing collocation arrangements. Depending on the size and complexity of the augments requested, there should be appropriate intervals for augments that, in several instances, should be shorter than that required to provision a new collocation arrangement. Such is the practice in other states in the region.

45. The parties have agreed that there is a specific Power Reconfiguration application fee. Consequently, there should be specific reference to a power reconfiguration application in section 8.2.

46. Since the Authority has expressly recognized that power should be available on a per-used amp basis, and has determined that the measurement of power usage may be done with meters, MCI proposes language in conformity with the Authority's orders. BellSouth's language regarding power usage, particularly its proposed exhibit D, attempts to impose additional requirements that the Authority did not order, and which are unnecessary and burdensome.

47. There is no firm order processing fee in Tennessee, as BellSouth concedes. Thus BellSouth's proposed language attempting to impose such a fee is unnecessary and confusing.

ISSUE 29

What are the appropriate rates for collocation, including for: (a)(1) conversion of virtual to physical collocation; (2) space preparation; (3) power meter reading, and power consumption; and (4) security (Attachment 4, Pricing Attachment.)

MCI position: (a)(1) Virtual to Physical Collocation Relocation, per voice grade, DS0 and DS1 charges (USOCs PE1BV, PE1BO, PE1B1, PE1B3, PE1BR, PE1BP, PE1BS and PE1BE). BellSouth's proposed per circuit relocation charge does not reflect the economies of scale of doing multiple circuit relocations as part of a Batch or Bulk process. BellSouth's per circuit conversion charges for virtual collocation have not been approved by the Authority and are unreasonable; (2) Physical Collocation – Space Preparation USOC PE1SJ. This rate was not permitted by the TRA when it granted BellSouth section 271 relief. See, BellSouth compliance filing Docket No. 97-00309, August 30, 2002; (3) Meter reading rates have not been approved by the TRA; also, BellSouth incorrectly or inadvertently describes its DC Power per amp used charge (i.e. USOC PE1PN) as a

"Construction" charge. As noted on BellSouth's 271 relief compliance filing in Docket No. 97-00309, dated August 30, 2002, this charge is for DC Power "Consumption". As such, the description of USOC PE1PN should be changed to read "Consumption" instead of "Construction".
(4) Physical Collocation – Security Access System USOC PE1AX. This rate was not permitted by the TRA when it granted BellSouth section 271 relief. See, BellSouth compliance filing Docket No. 97-00309, August 30, 2002.

BST Position: (a) The rates provided to MCI are TELRIC-based rates and thus should apply.

48. The virtual to physical collocation conversion rates proposed by BellSouth have not been approved by the Authority and are unreasonable on their face, particularly because they are proposed on a "per circuit" basis, which is not cost-based. The application of these rates on a per-circuit basis would result in prohibitive charges to CLECs, including MCI.

49. The rate for Physical Collocation – Space Preparation, as proposed by BellSouth, was not permitted by the Authority when it granted BellSouth section 271 relief. Moreover, the cost for this function is subsumed in BellSouth's other collocation rates.

50. Meter reading rates have not been approved by the TRA. In addition, BellSouth incorrectly or inadvertently describes its DC Power per amp used charge as a "Construction" charge. As noted on BellSouth's 271 relief compliance filing in Docket No. 97-00309, dated August 30, 2002, this charge is for DC Power "Consumption". As such, the description of the USOC for this rate should be changed to read "Consumption" instead of "Construction".

51. The rate for Physical Collocation – Security Access System, as proposed by BellSouth, was not permitted by the Authority when it granted BellSouth section 271 relief. Moreover, the cost for this function is subsumed in BellSouth's other collocation rates.

ORDERING

ISSUE 30

How should disputes over alleged unauthorized access to CSR information be handled under the Agreement? (Attachment 6, Section 1.3 2)

MCI position: If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help," in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.

BST position: This issue addresses when a party is in violation of federal law as well as the Interconnection Agreement by obtaining unauthorized access to CSR information. In such an instance and when the offending party cannot prove that the violation has been cured, the alleging party should have the right to suspend and terminate service after notice sent via e-mail and an explicit cure period. If there is a legitimate dispute as to the allegation of unauthorized access to CSR information, the alleging party should seek expedited

resolution of the dispute at the Authority before any suspension or termination of service.

52. MCI and BellSouth have agreed to certain restrictions on the ability of the other party to access and use customer service record ("CSR") information. The parties disagree, however, on how disputes over non-compliance with the restrictions should be handled. BellSouth's proposed language would authorize BellSouth to suspend the processing of pending orders, reject the submission of future orders, and suspend future access to CSR information, even if MCI disputes that it has failed to comply with all applicable requirements. The proper procedure for handling a dispute over non-compliance with rules regarding CSR information is expedited dispute resolution under the terms of the Agreement. BellSouth's proposed 'self-help" effectively denies MCI the ability to use the dispute resolution process that the parties have agreed to.

ISSUE 31

Should BellSouth provide a download with daily updates to the directory assistance database (DADS) to MCI, at a nondiscriminatory price? (Attachment 6, Section 8, including subparts, Pricing Attachment.)

MCI position: Yes. BellSouth is required to provide nondiscriminatory access under Sections 251(b)(3) of the Act, and any other applicable law. Nondiscriminatory access contemplates use of the data without use restrictions, at a price that is nondiscriminatory.

BST position: Yes. DADs is offered pursuant to BellSouth's tariff and thus its price and terms are nondiscriminatory.

53. The parties agree that BellSouth is required to provide a download with daily updates to the directory assistance database ("DADS"). They dispute whether BellSouth is required to provide DADS under section 251(b)(3) of the Act and any other

applicable law. BellSouth does not address whether it is required to provide it under section 251(b)(3), rather it simply states that it is obligated to provide it under Section 271. Section 251(b)(3) requires all local exchange carriers to provide dialing parity to competing providers and to "permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." Thus, section 252(b)(3) requires BellSouth to provide MCI nondiscriminatory access to DADS, which includes providing DADS at a nondiscriminatory price and without restrictions on the use of the data. BellSouth has the vast majority of the directory assistance listings in its territory and would have a competitive advantage if it were not required to provide access to DADS on a nondiscriminatory basis.

54. Because BellSouth is required to provide access to DADS to MCI under section 251(b)(3), the nondiscriminatory price for such access is required by the Act to be included in the interconnection agreement. BellSouth should be required to establish a nondiscriminatory, cost-based rate for DADS to be submitted to the Authority for approval and then incorporated into the Agreement.

BILLING

ISSUE 32

What charges, if any, should be imposed for records changes made by the parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (Attachment 7, Section 1 14 1)

MCI position: Each party must make a number of changes (e.g., to the LERG and CLLI) when merger activity occurs. Thus, the contract language should be reciprocal, and since each

party benefits from these changes, each party should bear its own expenses.

BST Position: This issue is not appropriate for arbitration in this proceeding because it involves a request by MCI that is not encompassed within BellSouth's obligations pursuant to § 251 of the Act. BellSouth's Merger and Acquisition process available on its interconnection website explains the process for obtaining rates for records changes associated with merger and acquisition activity. Requests of this type are initiated based on a business decision made by MCI, consequently the associated charges to perform this work should be borne by MCI.

55. Not only would BellSouth's language require MCI, and MCI only, to pay in the event that LEC identifiers are changed, BellSouth would require that MCI pay charges that BellSouth has separately and unilaterally determined and that BellSouth has failed to disclose throughout the parties' negotiations. The recently concluded bankruptcy proceedings in the Bankruptcy Court for the Southern District of New York involving MCI and its corporate parent and affiliates expressly authorized the reorganization of those companies, including the mergers of MCI and affiliated local exchange carriers, and transfers of local exchange-related assets to MCI from other affiliated carriers. MCI's Plan of Reorganization in the bankruptcy cases precludes carriers, including BellSouth, from assessing charges on MCI for the consolidation of entities carried out pursuant to the Plan. The bankruptcy court entered an order approving the Plan. BellSouth was a party to the bankruptcy cases and is therefore bound by them. Thus, to the extent that BellSouth seeks recovery of costs relating to such mergers and transfers, it is foreclosed by the orders of the bankruptcy court and BellSouth risks violations of the orders in effect from that court.

ISSUE 33

How should the rate for the calculation of late payments be determined? (Attachment 7, Section 1 17.)

MCI position: The late payment rate should be included in the agreement and capped by applicable law.

BST position: BellSouth is willing to agree to language requiring it to comply with applicable law regarding late payment charges. It is unnecessary to include a late payment pricing table.

56. The late payment rates that BellSouth wants to impose on MCI are contained in several different BellSouth tariffs that it would have the ability to change by filing revisions with the Authority or the FCC. MCI's proposal that the late payment rate be included in the Agreement and capped by applicable law would be subject to change only by agreement or the change of law process. MCI's language complies with the Act and should be adopted. BellSouth also proposes that the late payment rate be taken from the "applicable tariff." This approach overlooks the fact that the services provided in the Agreement are not tariffed, and that therefore there is not a tariff that applies.

ISSUE 34

What process should be used for the Discontinuing of Service? (Attachment 7, Section 1.19 (all subsections).)

MCI position: The process proposed by MCI should be used. This process is similar to the process currently in place. BellSouth proposes a process that would enable it, in the event of any payment that is not on time on an account, and regardless whether payment is disputed, to discontinue service and take other actions unilaterally and broadly, which is inappropriate. BellSouth should be required to go through the dispute resolution process before discontinuing service.

BST position: Based on MCI's prior financial history, including the filing of bankruptcy, MCI should pay all billings and then dispute. Accordingly, BellSouth should have the ability to suspend, discontinue, or terminate service for nonpayment of billings.

In addition, MCI should be required to pay any additional, undisputed amounts that become past due during any suspension or cure period.

Regarding deposits, there is no dispute that BellSouth can request a deposit. Thus, BellSouth should have the right to suspend, discontinue, or terminate for nonpayment of a deposit request.

57. MCI proposes a process consistent with that contained in the parties' current interconnection agreement. For non-disputed amounts owed, MCI's language would enable BellSouth to take action to suspend and disconnect services to MCI. For disputed amounts, BellSouth would be required to go through the dispute resolution process before taking any action to suspend and disconnect services. In either case, the services to be suspended or disconnected would be those related to the accounts on which payment is past due. BellSouth's language would enable it to suspend and disconnect all services to MCI, even when bills are in dispute. BellSouth thus proposes resort to self-help that would have dire consequences for consumers and businesses alike. MCI's language therefore should be adopted.

REQUEST FOR RELIEF

WHEREFORE, MCI respectfully requests that the Authority grant the following relief:

A. Arbitrate the unresolved issues between MCI and BellSouth within the timetable specified in the Act;

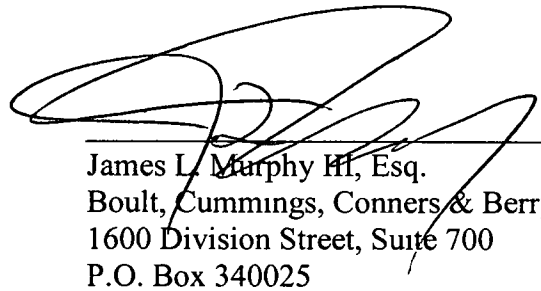
B. Issue an order directing the parties to submit an interconnection agreement reflecting the agreed upon language in Exhibit B and the resolution in this arbitration proceeding of the unresolved issues described above;

C. Retain jurisdiction of this arbitration until the parties have submitted agreement for approval in accordance with Section 252(e) of the Act;

D. Retain jurisdiction of this arbitration and the parties hereto as necessary to enforce the agreement; and

E. Take such other and further actions as it deems appropriate.

RESPECTFULLY SUBMITTED, this 15th day of August, 2005.



James L. Murphy III, Esq.
Boult, Cummings, Conners & Berry PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
Phone: (615) 252-2303
Fax: (615) 252-6303
E-mail: jmurphy@boultcummings.com

Dulaney L. O'Roark III, Esq.
Kennard B. Woods, Esq.
MCI, Inc.
6 Concourse Parkway, Suite 600
Atlanta, GA 30328
Phone: (770) 284-5497
Fax: (770) 284-5488
E-mail: de.oroark@mci.com
ken.woods@mci.com

Donna Canzano McNulty, Esq.
MCI, Inc.
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301
Phone: (850) 219-1008
Fax: (850) 219-1018
E-mail: donna.mcnulty@mci.com

Attorneys for MCI

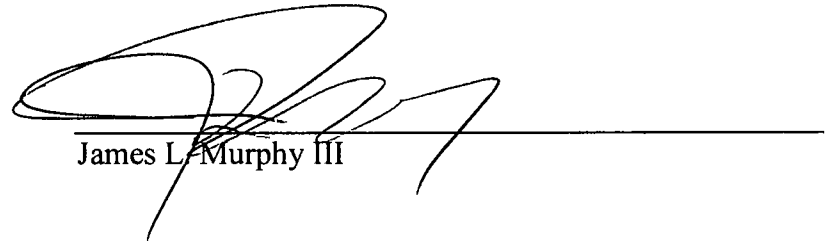
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

Guy Hicks
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

Consumer Advocate Division
425 5th Avenue, N., 2nd Floor
Nashville, TN 37243-0491

on this the 15th day of August, 2005.



James L. Murphy III