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May 31, 2006

VIA HAND DELIVERY  
Honorable Jean Stone  
Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee

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

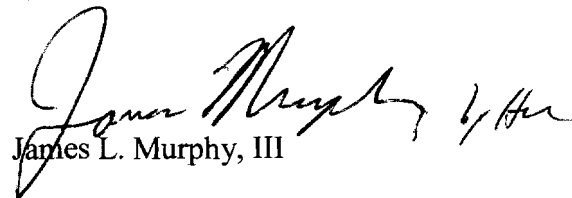
Dear Hearing Officer Stone:

Enclosed please find the Rebuttal Testimony Of Don Price on behalf of MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services ("Verizon Access") in the above-captioned proceeding.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
James L. Murphy, III

JLM/jm

cc: Mr. Dulaney L. O'Rourke III (via email)  
Ms. Donna Canzano McNulty (via email)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**In re: Petition of MCImetro Access  
Transmission Services LLC for Arbitration of  
Certain Terms and Conditions of Proposed  
Interconnection Agreement with BellSouth  
Telecommunications, Inc. Concerning  
Interconnection and Resale under the  
Telecommunications Act of 1996**

**Docket No. 05-00231**

**REBUTTAL TESTIMONY OF DON PRICE  
ON BEHALF OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
d/b/a VERIZON ACCESS TRANSMISSION SERVICES ("VERIZON ACCESS")**

**May 31, 2006**

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**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Don Price. My business address is 701 Brazos, Suite 600, Austin, Texas 78701.

**Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

A. I am employed by Verizon Business as Director – State Regulatory Policy in the Verizon Business Regulatory and Litigation department.

**Q. ARE YOU THE SAME DON PRICE WHO PREVIOUSLY FILED DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes.

**II. PURPOSE OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

A. My testimony explains the status of disputed issues between Verizon Access and BellSouth, and responds to portions of the testimony of the BellSouth witnesses on those issues.

**III. UPDATE OF EVENTS**

**Q. HAVE THE PARTIES BEEN ABLE TO RESOLVE ADDITIONAL ISSUES SINCE THE FILING OF DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes. In the past few weeks the parties resolved issues 22, 32, and 33, leaving only four remaining issues: 12, 21, 26 and 34.

**IV. REBUTTAL TESTIMONY ON ISSUES REMAINING IN DISPUTE**

**Issue 12: Should Verizon Access be required to indemnify BST for BST's negligence for claims by third parties who are not Verizon Access customers in conjunction with BST's provision of PBX Locate Service to Verizon Access?**

**Contract Provision: A2 – 7.4.2.2**

**Q. IS IT SIGNIFICANT TO RESOLUTION OF THIS ISSUE, AS MS. TIPTON SUGGESTS, THAT BELL SOUTH ASSERTS THAT IT HAS NO OBLIGATION UNDER SECTION 251 OF THE FEDERAL TELECOMMUNICATIONS ACT TO PROVIDE THE PBX LOCATE SERVICE?**

A. No. BellSouth has agreed to provide PBX Locate under the interconnection agreement ("ICA"), so the Authority must arbitrate any disputes about the terms and conditions for the service.

**Q. SHOULD BELL SOUTH RECEIVE A MORE EXTENSIVE INDEMNITY FOR PBX LOCATE THAN FOR OTHER SERVICES UNDER THE ICA?**

A. No. There is no reason why this one service offered under the ICA should be subject to a different indemnification provision (which would apply to claims by third parties who are not Verizon Access customers) than the comprehensive provision that the parties have agreed will apply to all other services under the ICA.

**Q. HOW DOES MS. TIPTON ATTEMPT TO JUSTIFY A BROADER INDEMNIFICATION FOR PBX LOCATE?**

A. Ms. Tipton argues that, when Verizon Access purchases BellSouth's PBX Locate Service, Verizon Access is no different from a BellSouth end user taking BellSouth's PinPoint retail service. At page 4 of her testimony, summarizing BellSouth's position, Ms. Tipton states:

1 ...that [Verizon Access should] be subject to essentially the same  
2 indemnification terms and conditions that BellSouth's PinPoint retail  
3 customers are subject to when [Verizon Access] purchases BellSouth's  
4 PBX Locate service.

5 As Ms. Tipton notes in her testimony, the effect of BellSouth's retail tariff is to  
6 require its end user customers to indemnify BellSouth against claims brought  
7 against BellSouth by third parties who experience an emergency situation while  
8 on the BellSouth customer's premises.<sup>1</sup>

9 **Q. WHAT IS VERIZON ACCESS'S RESPONSE TO THE BELL SOUTH**  
10 **POSITION?**

11 **A.** Ms. Tipton's analogy between a BellSouth end user taking retail PinPoint service  
12 and Verizon Access purchasing PBX Locate service is inapt. Verizon Access is  
13 not similarly situated, because it is a *provider* of services to end users rather than  
14 an end user itself. The duty of a retail customer to indemnify the service provider  
15 gives the customer an incentive to put systems in place that will protect people  
16 on its property, but Verizon Access, as a service provider, has no control over the  
17 goings and comings of third parties on its end user customers' premises, and  
18 thus no ability to limit its liability.

19 Moreover, in the retail context, BellSouth's indemnity rights are of no value  
20 when its end user customer goes broke or otherwise lacks funds. In the  
21 wholesale context, BellSouth would like to improve its position by having a  
22 company like Verizon Access provide a broad indemnification, which may be  
23 considerably more valuable than an indemnification from a retail customer. The

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<sup>1</sup> Exhibit PAT – 1, page 3 of 4, General Exchange Tariff A13.27.8(B.11).

Authority should reject BellSouth's attempt to turn Verizon Access into its insurance company for third-party claims.

**Issue 21: What rates is MCI entitled to charge BST, and what records is BST required to provide MCI, for intraLATA toll traffic originated by an ICO, carried over BST's network and then terminated by MCI, when (i) the ICO is on a Primary Carrier Plan; or (ii) BST notifies MCI that the ICO is not on a Primary Carrier Plan?**

**Contract Provision: A3 – 7.5.4**

**Q. WHAT IS YOUR RESPONSE TO THE TESTIMONY OF BELL SOUTH WITNESS SHELLEY DECKER ON THIS ISSUE?**

A. At page 3 of her testimony, Ms. Decker states that ICOs "may have very few end users who utilize BellSouth as the intraLATA toll provider." Even though she also says that ICOs "may generate a substantial number of minutes of use ("MOUs") that BellSouth transits to [Verizon Access] as local traffic," Ms. Decker concludes that there could be many ICOs on the PCP that do not send much, if any, intraLATA toll traffic to BellSouth for termination to Verizon Access. Even if true, Ms. Decker's assumption that ICOs do not send much traffic to BellSouth for termination to Verizon Access, and her resulting conclusion, is irrelevant. The language at issue in the interconnection agreement addresses the intraLATA toll traffic that ICOs *do* send to BellSouth for termination to Verizon Access, regardless of what the volume of that traffic is.

**Q. CAN YOU EXPLAIN THIS RESPONSE?**

A. Yes. The gist of this issue is that Ms. Decker would have Verizon Access disregard its own Authority-approved tariff and allow BellSouth and ICOs to determine what traffic is subject to Verizon Access's terminating access charges.

1           What Ms. Decker fails to note, however, is that the designation of certain  
2           traffic as "local" is made pursuant to bilateral agreements between BellSouth and  
3           the ICO. Such agreements are not reflected in the industry reference document  
4           that specifies the correct jurisdiction of calls, the Local Exchange Routing Guide.  
5           Moreover, it is the terminating party (in this case, Verizon Access) whose tariff  
6           determines whether terminating access charges apply. An originating party (*i.e.*,  
7           the ICO) and that party's toll provider (*i.e.*, BellSouth) cannot contract between  
8           themselves to escape the rates, terms, and conditions contained in the tariff of a  
9           party (*i.e.*, Verizon Access) whose terminating service they use.

10   **Q. DOES BELL SOUTH TAKE ISSUE WITH VERIZON ACCESS'S POSITION**  
11   **THAT IT IS ENTITLED TO COMPENSATION WHEN IT TERMINATES**  
12   **INTRALATA TOLL TRAFFIC THAT ORIGINATES FROM A THIRD-PARTY**  
13   **LEC'S CUSTOMER AND TRAVERSES BELL SOUTH'S NETWORK?**

14   **A.** No. BellSouth seems to agree that Verizon Access is entitled to bill for  
15           terminating access for intraLATA toll traffic that it terminates, regardless of what  
16           carrier sent it over BellSouth's network. The dispute involves traffic that, subject  
17           to bilateral agreement between BellSouth and an ICO, those carriers have  
18           chosen not to treat as "toll" traffic.

19           Ms. Decker's testimony claims that Verizon Access's tariff, duly approved  
20           by this Authority, is applicable only when it has not been modified by a bilateral  
21           agreement between BellSouth and an ICO. But there is no logical, or, to my  
22           knowledge, legal support for this novel view. Agreements between BellSouth  
23           and the originating ICO are irrelevant to the terminating access Verizon Access  
24           must receive under its approved tariff. Were BellSouth's novel theory valid,



Verizon Access and its predecessor, MCI, long ago would have entered into agreements with other carriers in order to escape paying BellSouth's and other ILECs' access charges. Surely BellSouth does not believe that carrier access tariffs can be so easily avoided.

**Issue 22: A) Should virtual NXX services offered by Verizon Access 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?**

**Contract Provisions: A3 – 7.1, 7.5.4, 7.5.5**

**Q. DO YOU HAVE AN UPDATE REGARDING THE STATUS OF THIS ISSUE?**

A. Yes. The parties have resolved this issue, so the testimony on it is now moot.

**Issue 26: Is BST obligated to act as a transit carrier? If so, what is the appropriate transit rate?**

**Contract Provisions: A3 – 7.10.2, pricing attachment**

**Q. MS. TIPTON ARGUES THAT BELL SOUTH DOES NOT HAVE A SECTION 251 OBLIGATION TO PROVIDE TRANSIT SERVICE. IS THAT POINT RELEVANT TO THE DISPUTE THE AUTHORITY MUST RESOLVE?**

A. No, because BellSouth has agreed to provide the transit function to Verizon

Access. The Agreement must, therefore, include the terms and conditions under which BellSouth will provide the transit function, and the Authority must arbitrate those terms. The parties have reached agreement during their Section 251 negotiations concerning those terms and conditions except for the transit rates.

Because the parties have attempted to address the transit rate issue during their

1 Section 251 negotiations, it is appropriate for the Authority to decide the issue in  
2 this case.

3 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE ON THIS ISSUE.**

4  
5 A. BellSouth has proposed a tandem intermediary charge of \$.0025 per minute of  
6 use. Ms. Tipton's testimony does not explain why the rate BellSouth has  
7 proposed is reasonable. Rather, the majority of her testimony is devoted to an  
8 explanation of what rate(s) should *not* apply.

9 **Q. WHAT CONCLUSION SHOULD THE AUTHORITY DRAW FROM THESE**  
10 **FACTS?**

11 A. As I noted in my Direct Testimony, BellSouth bears the burden of explaining why  
12 its proposed rates are reasonable. Establishing a reasonable rate requires an  
13 affirmative demonstration; it is not simply a process of eliminating other  
14 alternatives, as BellSouth has done here. Because it has not provided any  
15 evidence in support of its proposed rate, there is no basis for the Authority to  
16 approve it.

17  
18  
19 **Issue 32: What charges, if any, should be imposed for records changes made by**  
20 **the Parties to reflect changes in corporate names or other LEC identifiers such as**  
21 **OCN, CC, CIC and ACNA?**

22  
23 **Contract Provisions: A7 – 1.14.1**  
24

25 **Q. DO YOU HAVE UPDATED INFORMATION ON THE STATUS OF THIS ISSUE?**

26 A. Yes. The parties have resolved this issue, so the testimony on it is now moot.  
27

28 **Issue 33: How should the rate for the calculation of late payments be**  
29 **determined?**

**Contract Provisions: A7 – 1.17**

**Q. DO YOU HAVE UPDATED INFORMATION ON THIS ISSUE?**

A. Yes. The parties have resolved this issue, so the testimony on it is now moot.

**Issue 34: What process should be used for the Discontinuing of Service?**

**Contract Provisions: A7 – 1.19**

**Q. HAS MS. TIPTON RAISED A LEGITIMATE CONCERN WITH RESPECT TO VERIZON ACCESS'S POSITION ON THIS ISSUE?**

A. No. Ms. Tipton claims that BellSouth is concerned that Verizon Access's proposed language would prevent BellSouth from "protect[ing] itself from the higher risk associated with non-payment by ensuring that customers are not allowed to increase the likelihood of bad debt."

However, as I noted in my direct testimony (at 32), Verizon Access's language is based on the existing Agreement, and Ms. Tipton does not mention any problems having arisen from the existing terms. Therefore, Ms. Tipton's assumption that BellSouth needs different terms to protect itself from this assertedly higher risk is not supported or convincing.

**Q. HOW DO YOU RESPOND TO THE HYPOTHETICAL MS. TIPTON INTRODUCES AT PAGE 21 OF HER TESTIMONY?**

A. In her hypothetical, Ms. Tipton argues that "BellSouth would still be obligated to provide service to [Verizon Access] in Tennessee" even if BellSouth was not timely paid on "50, 75, or even 99 of those [Verizon Access] accounts." Ms. Tipton's testimony is misleading. Under Verizon Access's proposal, if Verizon

1 Access were to somehow fail to make timely payment on 50 of its accounts, **all** of  
2 those 50 accounts would be at risk for suspension or disconnection. So it is not  
3 true that "BellSouth would still be obligated to provide service to MCI in  
4 Tennessee." Rather, BellSouth's obligation would extend only to those billing  
5 accounts on which payments have been timely made by Verizon Access.  
6 Contrary to Ms. Tipton's testimony, expecting BellSouth to keep providing service  
7 on paid-up accounts is not unfair or risky for BellSouth. But giving BellSouth the  
8 right to suspend or discontinue service on just one billing account—let alone 50  
9 or more--could disrupt service to numerous customers, because one such  
10 account can cover hundreds or even thousands of circuits and/or services.

11 For these reasons, and those described in my direct testimony, the  
12 Authority should reject BellSouth's proposed language and instead accept  
13 Verizon's proposed language.

14  
15 **V. CONCLUSION**

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 **A. Yes.**

## CERTIFICATE OF SERVICE

The undersigned certifies that on this 31<sup>st</sup> day of May, 2006, a copy of the foregoing document was served on the following, via the method set forth below:

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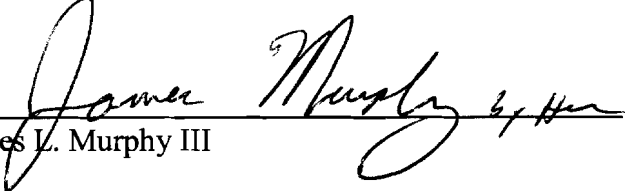
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