



Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: September 14, 2000
TO: Blanca Bayó, Director, Records and Reporting
FROM: Jane Faurot, Chief, Bureau of Reporting
RE: DOCKET NO. 991755-TP, HEARING HELD 9-6-00

RE: REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC AND MCI WORLDCOM COMMUNICATIONS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR BREACH OF APPROVED INTERCONNECTION AGREEMENT.

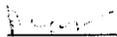
DOCUMENT NO. 11381, 9-13-00

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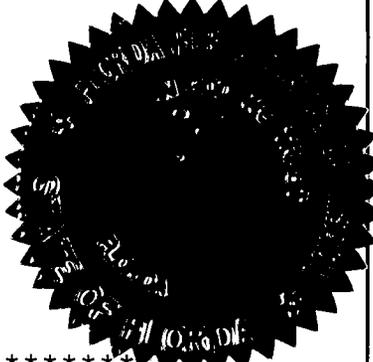
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PSC/RAR 28 (Rev1/00)

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991755-TP
:
REQUEST FOR ARBITRATION CONCERNING :
COMPLAINT OF MCIMETRO ACCESS :
TRANSMISSION SERVICES LLC AND :
MCI WORLDCOM COMMUNICATIONS, INC. :
AGAINST BELLSOUTH TELECOMMUNI- :
CATIONS, INC. FOR BREACH OF :
APPROVED INTERCONNECTION AGREEMENT. :
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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

DATE: Wednesday, September 6, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 2:40 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850) 413-6736

1 **APPEARANCES:**

2 RICHARD D. MELSON, Hopping Green Sams and
3 Smith, Post Office Box 6526, Tallahassee, Florida
4 32314, appearing on behalf of MCImetro Access
5 Transmission Services, LLC and MCI WorldCom
6 Communications, Inc.

7 KIP EDENFIELD, BellSouth
8 Telecommunications, Inc., c/o Nancy Sims, 150 South
9 Monroe Street, Suite 400, Tallahassee, Florida
10 32301, appearing on behalf of BellSouth
11 Telecommunications, Inc.

12 TIMOTHY VACCARO, FPSC Division of Legal
13 Services, 2540 Shumard Oak Boulevard, Tallahassee,
14 Florida 32399-0850, appearing on behalf of the
15 Commission Staff.

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CHAIRMAN DEASON: Call the hearing to order.

Could I have the notice read, please.

MR. VACCARO: Pursuant to notice this time and place have been designated for a formal hearing in Docket Number 991755-TP for the purpose set forth within the notice.

CHAIRMAN DEASON: Thank you. Take appearances.

MR. EDENFIELD: Kip Edenfield on behalf of BellSouth.

MR. MELSON: Rick Melson on behalf of MCI Metro Access Transmission Services LLC and MCI WorldCom Communications, Inc., that I will try to refer to as WorldCom.

CHAIRMAN DEASON: Very well.

MR. VACCARO: And Tim Vaccaro on behalf of Commission Staff.

CHAIRMAN DEASON: Okay. Mr. Vaccaro, I notice that we are going to have opening statements and some of that was at my request. Are there other preliminary matters?

MR. VACCARO: A few other matters, Mr. Chairman. Staff has two exhibits which the parties have agreed to stipulate into the record.

CHAIRMAN DEASON: Okay. You wish to identify

1 those now?

2 MR. VACCARO: Yes, sir.

3 CHAIRMAN DEASON: Okay. Stip-1, which is the
4 official recognition list, that will be identified as
5 Exhibit Number 1.

6 (Exhibit 1 marked for identification.)

7 MR. VACCARO: Yes, sir.

8 CHAIRMAN DEASON: And there's no objection to
9 having this admitted into the record?

10 MR. MELSON: No objection.

11 MR. EDENFIELD: And no objection.

12 CHAIRMAN DEASON: Very well. I show then that
13 Exhibit 1 is admitted.

14 (Exhibit 1 admitted into the record.)

15 CHAIRMAN DEASON: And Stip-2, which is
16 BellSouth's responses to discovery and production of
17 documents and first set of interrogatories, this will be
18 identified as Exhibit Number 2.

19 (Exhibit 2 marked for identification.)

20 CHAIRMAN DEASON: And there's no objection to
21 this exhibit either?

22 MR. MELSON: No objection.

23 MR. EDENFIELD: No objection.

24 CHAIRMAN DEASON: Very well. I will show then
25 Exhibit 2 is admitted.

1 (Exhibit 2 admitted into the record.)

2 MR. MELSON: Commissioner Deason, the parties
3 have one preliminary matter. Issue 4 as identified in the
4 prehearing order concerns the question of if the
5 Commission rules in WorldCom's favor in this case, at what
6 date should any amendment to the interconnection agreement
7 take effect, and what would be the date to which any
8 retroactive credit or refund would date back? We have
9 talked with BellSouth this morning, and WorldCom is
10 willing to stipulate to BellSouth's position on the
11 effective date which would be prospective from the date
12 WorldCom requested an the amendment of the interconnection
13 agreement.

14 MR. EDENFIELD: That's correct.

15 CHAIRMAN DEASON: Okay. So basically then,
16 Issue 4 goes away; is that correct?

17 MR. MELSON: Yes, sir.

18 CHAIRMAN DEASON: Okay. Very good. Staff has
19 no objection, I take it?

20 MR. VACCARO: No objection.

21 CHAIRMAN DEASON: Very well. Other preliminary
22 matters?

23 MR. EDENFIELD: The only other thing BellSouth
24 would bring up, Commissioner Deason, is we would like for
25 you to take official recognition of a number of cases that

1 were not on Staff's official recognition list if that's
2 the appropriate time for this.

3 CHAIRMAN DEASON: Yes. How extensive is your
4 list?

5 MR. EDENFIELD: It's three cases.

6 CHAIRMAN DEASON: Three cases. Do you have
7 those written down, or do you want us to write them down?

8 MR. EDENFIELD: I have them written down, and I
9 will -- I think I have copies of all of them, and I will
10 pass those out.

11 CHAIRMAN DEASON: If you could just distribute
12 the copies, we'll just incorporate that as part of
13 Exhibit 1 if there's no objection. Mr. Melson, have you
14 seen this list?

15 MR. MELSON: I have not, but I assume -- just a
16 moment. Commissioner, I have not seen those, but we'll
17 have no objection to them.

18 CHAIRMAN DEASON: Very well. Staff?

19 MR. VACCARO: No objection.

20 CHAIRMAN DEASON: Okay. Mr. Edenfield, if you
21 will distribute that either now or at some convenient time
22 before today is concluded, that would be appreciated, and
23 we will incorporate that as part of Exhibit 1.

24 MR. EDENFIELD: Thank you.

25 MR. MELSON: And, Commissioner, along the same

1 line, WorldCom would ask that you take official
2 recognition of an arbitrator's report and decision in a
3 Washington arbitration. I believe the Ninth Circuit
4 decision that is an appeal from that order has been
5 identified for official recognition, but the Washington
6 Commission order itself has not. If we could have that
7 added to that list as well, I'd appreciate it.

8 CHAIRMAN DEASON: I need that clarified. You're
9 wanting an order from the Washington Commission?

10 MR. MELSON: Yes, sir.

11 CHAIRMAN DEASON: Okay. You're saying that
12 there has been an appeal filed, but there's been no
13 decision?

14 MR. MELSON: No. There has been a decision on
15 the appeal, and that is one of the items that's already
16 listed on the official recognition list, but to understand
17 everything in that decision, we believe you would have to
18 look back to the Commission's decision.

19 CHAIRMAN DEASON: Okay. Mr. Edenfield?

20 MR. EDENFIELD: I have no objection to that.

21 CHAIRMAN DEASON: Staff?

22 MR. VACCARO: No objection.

23 CHAIRMAN DEASON: That too will be incorporated
24 as part of Exhibit 1.

25 MR. MELSON: Thank you.

1 CHAIRMAN DEASON: Any other preliminary matters?

2 THE STAFF: No other preliminary matters.

3 CHAIRMAN DEASON: Okay. Commissioners, the
4 parties are prepared to make opening statements, and it's
5 at their discretion as to what they say to us, but I had
6 requested they also -- one of the things they address
7 would be the Commission's jurisdiction in this matter and
8 what would be the effect of our decision, if there are any
9 things out there in the form of appeals or rule challenges
10 or whatever that may exist that could impact our decision.

11 I think it's good to understand what our
12 jurisdiction is and what the parties expect from us and
13 what the impact of our decision is and whether we're just
14 simply acting as FCC's field office or not. And that's
15 what I want to know.

16 COMMISSIONER JACOBS: This is interesting. This
17 is the flip side of the argument we had on the
18 collocation.

19 CHAIRMAN DEASON: I guess we'll find out.

20 MR. MELSON: We'll find out.

21 CHAIRMAN DEASON: Okay. WorldCom actually filed
22 for this arbitration; correct?

23 MR. MELSON: Correct.

24 CHAIRMAN DEASON: I'll let you go first,
25 Mr. Melson.

1 MR. MELSON: All right. And, Commissioners, I'm
2 going to -- my opening statement is really two parts.
3 First, I'm going to address a little bit of the merits of
4 the case, and then in the latter part of it, I will
5 address the question that Commissioner Deason had asked.

6 As you know from reading the prefiled testimony,
7 this case involves the reciprocal compensation rate that
8 BellSouth is required to pay WorldCom when a BellSouth
9 local customer makes a telephone call to a WorldCom local
10 customer in either the Orlando area or the South Florida
11 area. And specifically, the question is whether WorldCom
12 is entitled to receive only an end office switching rate
13 or whether it is also entitled to receive a tandem
14 switching rate.

15 To answer that you have to address, we believe,
16 a couple of legal issues and one factual issue. The legal
17 issues are, what is the proper interpretation of FCC's
18 Rule 51.711? And the second question is, how does that
19 rule apply to BellSouth and WorldCom given the history of
20 the particular interconnection agreement we've got and the
21 change of law provision that's included in that agreement?
22 With respect to the FCC rule itself, WorldCom believes
23 that establishes an either/or test. In other words,
24 WorldCom is entitled to receive the higher tandem
25 interconnection rate either if its local switch is served

1 geographic areas that are comparable to those served by
2 BellSouth's tandem or if our local network provides
3 functionality comparable to that provided by BellSouth's
4 tandem network.

5 BellSouth's position, on the other hand, is that
6 the rule is a two-part test, that we have to both show
7 geographic comparability and comparable functionality. We
8 submit that when you read the plain language of the FCC
9 rule and when you consider that language in light of the
10 policy that the FCC annunciated in the First Report and
11 Order, that it's clear that the rule is an either/or test.
12 And we believe that's supported by some of the court
13 decisions of which you've taken official recognition.

14 The second question, if you agree with us on the
15 interpretation of the rule, is how that rule applies to
16 the BellSouth/WorldCom interconnection agreement in light
17 of the timing of the Commission order that approved the
18 agreement, the stay of the FCC rules that was in effect at
19 that time, the subsequent lifting of that stay, and the
20 change in law provisions in the agreement. I think the
21 parties agree that the interconnection agreement as it's
22 written today as it was arbitrated does not permit
23 WorldCom to receive compensation based just on comparable
24 geographic coverage, but that arbitration took place at a
25 time when the FCC rule was stayed. And in your order

1 incorporating BellSouth's version of language into the
2 interconnection agreement, you said specifically -- or
3 noted specifically that the FCC rule on geographic
4 comparability that was the basis for what was then MCI's
5 argument, that that rule had been stayed and, therefore,
6 in essence, you were not obligated to follow it.

7 CHAIRMAN DEASON: Mr. Melson, let me ask you a
8 question on that point. So at the time that this was
9 first arbitrated, the rule had been stayed?

10 MR. MELSON: That is correct.

11 CHAIRMAN DEASON: So that put this Commission in
12 the position of making its decision without regard to the
13 rule; correct?

14 MR. MELSON: Correct.

15 CHAIRMAN DEASON: Okay.

16 MR. MELSON: And that was proper for you to do
17 at that point. With the stayed rule, you were under no
18 obligation to follow the provisions of a stayed rule.

19 CHAIRMAN DEASON: Okay. Now, the rule is no
20 longer stayed. In fact, the rule is, in effect, in force?

21 MR. MELSON: It's been reinstated, yes, sir.

22 CHAIRMAN DEASON: Okay. And so now we are
23 obligated to follow that rule?

24 MR. MELSON: Correct.

25 CHAIRMAN DEASON: Okay.

1 COMMISSIONER JABER: Clarify --

2 MR. MELSON: I'm sorry.

3 COMMISSIONER JABER: Clarify something for me
4 along those lines. When a rule is stayed, what is our
5 legal obligation? Do you apply the law as it exists at
6 the time? And if so, what was the law as it existed at
7 the time?

8 MR. MELSON: Your obligation is to apply the law
9 as it exists, and the law requires reciprocal
10 compensation. There was, in essence, as a result of the
11 appeal of the FCC's rule, a question as to what reciprocal
12 compensation meant. When the Supreme Court ruled in
13 January of 1999 that the FCC had not exceeded its
14 authority in promulgating the rule, in essence, the
15 Supreme Court was declaring what the law always had been.
16 And to the extent that an agency or a district court or a
17 circuit court had interpreted the law differently, the
18 Supreme Court decision on what the Telecom Act means, in
19 essence, dates back to the inception of the Act. The
20 court declares what the law has been.

21 CHAIRMAN DEASON: Let me see if I understand.
22 Since the rule was stayed at the time the Commission
23 first arbitrated this issue --

24 MR. MELSON: Yes, sir.

25 CHAIRMAN DEASON: -- this Commission was free to

1 look at the federal law and make its own interpretation?

2 MR. MELSON: That's correct.

3 CHAIRMAN DEASON: And we did that.

4 MR. MELSON: That's correct.

5 CHAIRMAN DEASON: Then the Supreme Court made a
6 decision which reinstated the FCC's rule?

7 MR. MELSON: Correct.

8 CHAIRMAN DEASON: Okay.

9 MR. MELSON: So it in combination with a
10 follow-on order from the Eighth Circuit lifting the
11 vacation of the stay, but the two orders combined
12 reinstated the rule.

13 CHAIRMAN DEASON: Okay. And so with that
14 reinstatement, you notified BellSouth that you felt that
15 there needed to be an amendment or a change to your
16 agreement because of that?

17 MR. MELSON: Correct.

18 CHAIRMAN DEASON: And they disagreed.

19 MR. MELSON: They disagreed.

20 CHAIRMAN DEASON: And so now we're back in front
21 of this Commission to arbitrate it again.

22 MR. MELSON: Exactly. And we've got a change of
23 law provision in the arbitration agreement which says, in
24 essence, when a provision of the agreement becomes
25 unlawful, the parties will meet -- or will contemplate

1 because parties will negotiate an amendment, and failing
2 an ability to agree will trigger the dispute.

3 CHAIRMAN DEASON: Okay. This is my question
4 then. The law has not changed. I'm talking about the
5 federal legislation. I don't know of any amendments to
6 that legislation.

7 MR. MELSON: Right.

8 CHAIRMAN DEASON: It's there. This Commission
9 interpreted that law one time. Now, you're saying because
10 the FCC's rule has been reinstated --

11 MR. MELSON: Because the Supreme Court declared
12 what the law has meant and consequently reinstated.

13 CHAIRMAN DEASON: Well, did the Supreme Court
14 say this is the only -- the FCC's interpretation is the
15 only fair interpretation of this law and all state
16 commissions -- the only thing you do now is just look at
17 the FCC rule and that's what you do, and the fact that you
18 interpreted it differently earlier means that you no
19 longer have that flexibility and that the effort that you
20 went to when you had those hearings is all for not now,
21 and it's just simply what the FCC says is what states are
22 obligated to do?

23 MR. MELSON: I don't think you will find
24 language to that effect in the Supreme Court decision, but
25 I think the legal effect of the decision is that from the

1 date the rule was reinstated, that that is the controlling
2 rule and at a minimum would have to be applied
3 prospectively by the Commission in any new arbitration or
4 any new action under the Act.

5 If we did not have a change of law provision in
6 our agreement, I think you would have a tougher question
7 as to whether the reinstatement of the rule goes back and
8 trumps your earlier decision. But given the change of law
9 provision that says when a provision of the agreement
10 becomes unlawful, the parties will change it, we believe
11 the agreement itself spells out what's to be done in light
12 of this type of situation, the decision by the Supreme
13 Court and the reinstatement of the rule.

14 COMMISSIONER JABER: Mr. Melson, at what point
15 is it just a contract dispute? I mean, could the argument
16 be made that the Commission did what it needed to do under
17 the FCC rule and under our own statutes and arbitrated the
18 agreement the first time, and because you have the change
19 of law provision, that now it's a court matter, you've got
20 a contractual dispute?

21 MR. MELSON: I don't believe so because the
22 Eighth Circuit said in a part of its original decision
23 that was not reversed that the states have the authority
24 and, I believe, the obligation to arbitrate disputes that
25 arise under interconnection agreements. And in any event,

1 Commission, you approved -- again, focussing on this
2 particular case, you approved an agreement that says if a
3 provision becomes unlawful, the parties agree. If they
4 can't agree, they take a dispute resolution. The dispute
5 resolution says that dispute comes back to you. So you
6 have approved a contract that says it comes back to you,
7 and that contractual obligation, we believe, is consistent
8 with what the federal courts have said one of your roles
9 is.

10 COMMISSIONER JABER: Do we have the discretion
11 to not approve a contract that has that kind of provision
12 in it?

13 MR. MELSON: That type of dispute resolution
14 provision?

15 COMMISSIONER JABER: A change of law provision.
16 And let me tell you why I'm asking so you can put it in
17 context. Is there a fundamental fairness issue? Is there
18 some expectation that the parties deserve finality to the
19 process? I mean, I understand what you're arguing with
20 respect to the Commission has an obligation to arbitrate
21 the agreement, but could the Commission take the view that
22 it has done that? And that should give the process
23 finality, and but for the change of law provision now, we
24 don't have finality. So then going forward, isn't it
25 appropriate for the Commission to not approve contracts

1 that have change of law provisions in them?

2 MR. MELSON: I think the answer to that is
3 probably no. The change in law provision is not something
4 that the Commission imposed on the parties. That was one
5 of the provisions in the agreement. If my recollection
6 serves, that was a negotiated provision. And, in essence,
7 the parties were saying in late 1996, early 1997, there's
8 a lot of uncertainty out there. We recognize that this
9 agreement is being arbitrated based on that uncertainty,
10 but once there is a final controlling decision, we, the
11 parties, want the agreement to conform to that. So to the
12 extent there's a lack of finality, it's a lack of finality
13 that the parties agreed to.

14 Could you refuse to approve that provision in an
15 agreement? I don't know. If there were a dispute about
16 whether that type of provision should be included, you
17 would have to arbitrate the question of whether should it
18 be in or should it be out. But if the parties have agreed
19 to it, I don't believe there's a basis for you to refuse
20 to approve it, but that's not something I've thought about
21 before this morning.

22 COMMISSIONER JABER: Okay. But you do
23 acknowledge that but for that provision, the decision made
24 by the Commission with respect to your agreement would
25 stand?

1 MR. MELSON: Not necessarily. I think it would
2 be a much tougher question. I think the change of law
3 provision in our agreement makes it an easy question, and
4 I haven't had to face what I think is the tougher
5 question: What would be the effect if we did not have
6 that type of a provision?

7 COMMISSIONER JACOBS: Only as to this particular
8 provision, not our authority generally, because I can
9 recall that we have made rulings on provisions such as
10 liquidated damages and such where we have determined that
11 those provisions should not go into an agreement, so it
12 would be as to this particular provision?

13 MR. MELSON: Correct. And just to give you some
14 context, what -- and this has nothing to do with this case
15 but to try to be responsive to your question,
16 Commissioner. In the MCI/BellSouth arbitration, the
17 Commission refused to arbitrate the issue of whether to
18 put in a liquidated damage provision or not. The Federal
19 Court here in Tallahassee has since ruled that you should
20 have arbitrated it, not that you should have put it in or
21 should have put it out, but that you had the jurisdiction
22 and the obligation to decide does it go in or out. And
23 then, I believe, the standard of review of that decision,
24 in or out, would be whether the agreement as approved
25 violates federal law. So you probably have a fairly wide

1 degree of discretion in saying it should be in or should
2 be out.

3 But the problem -- and I know we're struggling
4 with it as much as you are. There's not a
5 one-size-fits-all answer to how these FCC rules and court
6 decisions affect pending cases or existing contracts
7 because it depends on, you know, the timing of the
8 original decision, it depends on the particular provisions
9 in the contract. I think we've got a fairly easy case
10 here. And, you know, I'll be happy -- in other cases, it
11 may be tougher to try to give you what our view is, but I
12 don't think you're going to find a one-size-fits-all
13 answer, and that's probably as frustrating for the parties
14 as it is for you all.

15 COMMISSIONER JACOBS: Is it a reasonable
16 approach -- when I look at these disputes, I don't see an
17 instance where the Court has gone to the statute and
18 overturned the statute. What I see is a Court looking at
19 an administrative decision and saying that that
20 administrative decision -- it's even more interesting
21 because it doesn't even say that -- I guess in this one it
22 did, but in others, they don't even overturn the substance
23 of the decision. They simply say there was not record to
24 support the conclusion. So it doesn't even say that the
25 scope of the interpretation is absolutely off base. It

1 simply says that you didn't come with enough background
2 and support to justify what you have concluded.

3 MR. MELSON: And if we were arguing the
4 collocation docket today, I think that's quite a different
5 question. I'm glad the Chairman is going to give us an
6 opportunity to argue that because I think that is really a
7 different situation.

8 COMMISSIONER JACOBS: Right. And here they did,
9 they did address the substance, but I think point is
10 somewhat similar. The statute stands, and could we and
11 should we proceed under reasonable interpretations of the
12 statute even in the face of a dispute over that
13 administrative agency's interpretation of the statute?

14 MR. MELSON: You did that. You had to do that
15 during the period of time that that dispute was in
16 progress, but once the Supreme Court settled that dispute,
17 from that point forward, we believe you are obligated to
18 apply the FCC rule.

19 CHAIRMAN DEASON: So we're in the position now,
20 it's not our job to interpret the law. Our job is to
21 enforce the FCC rule.

22 MR. MELSON: At this point, I believe that's
23 correct. At this point, the FCC has interpreted the law
24 in a way that the Supreme Court has blessed. Your
25 obligation now is to apply that FCC rule, which, frankly,

1 as you can tell from the dispute here, requires an
2 interpretation of it because the parties don't agree even
3 as to how the rule itself is to be interpreted. And we
4 think, you know, when you look at the policy behind the
5 rule, which is good policy, that you will agree with our
6 interpretation, but obviously that is what we are here
7 saying as advocates. And then once you decide the proper
8 interpretation of the rule, you have then got to decide
9 how to apply it to the facts of this case.

10 COMMISSIONER JACOBS: But that gives me a great
11 deal of concern. In a statutory regime where there is
12 clear shared jurisdiction between the FCC and state
13 commissions and even in an instance where state
14 commissions have primary jurisdictions to arbitrate these
15 agreements, what we're forced to do is to, you know, for
16 lack of a better term do a tea leaf reading before we
17 enter into an arbitration agreement to figure out what our
18 boundaries are.

19 And if we happen to read the tea leaves wrong,
20 then we have to then sit and wait for the Court to go back
21 and get the tea leaves straight before we can come back
22 and figure out what we should do here. That seems to me
23 to be an unworkable and untenable situation.

24 MR. MELSON: Commissioner, except for the
25 additional overlay of the FCC, that's not all that

1 different from what happens under state law. You will
2 have state law that gives you authority and that gives you
3 a range of discretion, but until a court -- until somebody
4 says you've acted outside your range of discretion, you've
5 interpreted that law incorrectly and you get a decision
6 from the Florida Supreme Court, you can't be confident
7 that your interpretation was correct. And if the Florida
8 Supreme Court rules, no, the Commission's interpretation
9 was incorrect, then you are bound to follow that from that
10 day forward. It's more complicated in the shared
11 jurisdiction situation, but I think the fundamental
12 principles are the same.

13 COMMISSIONER JACOBS: Let me ask you this.
14 Don't you see that there is a difference? In the instance
15 you described, we have jurisdiction under state law.
16 We're looking at the organic law, and we're making our
17 interpretation of that, and the dispute has to do with our
18 interpretation of that. And this instance, I thought we
19 were looking at federal law and making our interpretation
20 of the bounds of federal law. What I hear the argument
21 being is, no, you don't look at federal statutes. You
22 look at what the prevailing interpretation that the FCC
23 has given to the federal statutes, and then you try and
24 take your lead from that.

25 MR. MELSON: To the extent the FCC is delegated

1 authority under the Act to establish rules and to the
2 extent those rules are lawful, then the Commission, we
3 believe, is bound to look to those rules as well as to the
4 Act. The situation you found yourself in in the original
5 arbitration in this case is, the FCC rules were in a state
6 of limbo because they had been stayed, and you properly at
7 that point fell back to your interpretation of the federal
8 law, but unfortunately, I think we have to recognize that
9 in that situation, once the dusts settles and the FCC rule
10 is either upheld or rejected, you then have to take a look
11 and say, okay, now where am I?

12 You know, in the collocation docket, you have
13 got a different situation because their rule was rejected.
14 Here, you've got a rule that was upheld, and we believe
15 you are obligated from this point forward to follow that
16 rule and, in particular, because of the change of law
17 provision in our agreement, to go back and apply it
18 retroactively.

19 COMMISSIONER JACOBS: Okay. Thank you.

20 COMMISSIONER JABER: Their rule being upheld, is
21 that now, in your mind, final? Is that a final decision,
22 or will there be additional challenges?

23 MR. MELSON: No, I don't believe there can be
24 any additional challenges to that.

25 COMMISSIONER JABER: So with respect to your

1 case, there will not be another change of law?

2 MR. MELSON: Correct. With respect to our
3 contract there may be, but with respect to this issue
4 there won't.

5 COMMISSIONER JABER: Well, let's talk about
6 that. With respect to your contract there may be. What
7 do you mean by that?

8 MR. MELSON: I mean, there could be other
9 decisions in the future that affect other provisions in
10 the contract, but for the symmetrical reciprocal
11 compensation, we now all know what the ground rules are.

12 COMMISSIONER JABER: Okay.

13 MR. MELSON: Let me look because I think I've
14 probably said just about everything I was going to say and
15 a little more. I think the one other point I would like
16 to make is, after you interpret the FCC rule, as I said,
17 you do have to make a factual determination of how it
18 applies to the facts in this case, and we believe, as we
19 said, it's an either/or rule. We believe WorldCom will
20 show you in this case comparable geographic coverage and
21 that then entitles us under the rule to the tandem rate.

22 I think you're probably going to hear some
23 reference today to some earlier decisions of this
24 Commission, some that came out even after the FCC rule was
25 reinstated where you have found that tandem compensation

1 was not appropriate. I think if you go back and look at
2 those decisions carefully, you will find that in every
3 case you said, as a matter of fact, the party before you
4 did not prove comparable geographic coverage. You then
5 talked about the alternative test, which is similar
6 functionality, and found that they also failed to prove
7 similar functionality, but we don't read anything in those
8 orders to say that if you successfully prove geographic
9 coverage, that you then have to meet another test. Thank
10 you.

11 CHAIRMAN DEASON: Thank you. Mr. Edenfield.

12 MR. EDENFIELD: Good morning. Instead of
13 preparing a speech, so to speak, I was really more
14 prepared to address specific issues that the Commission
15 might have, but just let me say at the outset that the
16 Commission has looked at this issue a number of times,
17 going all the way back to 1996. And in 1996, the
18 Commission developed a policy that it would not -- in the
19 realm of reciprocal compensation, it would not allow
20 carriers to recover for functions that they do not
21 perform. That policy has been in effect since 1996. This
22 Commission has looked at it, to my knowledge, at least
23 five times.

24 In fact, the last time the Commission looked at
25 it was two weeks ago today in the Intermedia arbitration

1 in which the Commission specifically held that there is a
2 two-prong test. One prong is functionality, the other is
3 geographic coverage, and that to be entitled to recover
4 the tandem switching element, you are going to have to
5 demonstrate that you have satisfied both of those
6 elements.

7 Dropping back to 1996 for a moment. There was
8 more to the Commission's decision as a basis in the law
9 than just saying that 51.711, which is the FCC rule that
10 was stayed at the time, was not applicable. If you look
11 back at the early decisions, you will see that the
12 Commission based its decision on federal law, specifically
13 252(d)(2)(A) and FCC's First Report and Order Paragraph
14 1090. Both of those statutes, the Act, and the FCC's
15 First Report and Order serve as a basis that supports the
16 Commission's policy that functionality is a requirement to
17 recover tandem switching.

18 There is absolutely nothing in the reinstatement
19 of FCC Rule 51.711 that in any way questions
20 Section 252(d)(2)(A) of the Act or Paragraph 1090 of the
21 FCC's First Report and Order. What MCI is here -- this is
22 a little different in a way from what you've looked at,
23 although its the same subject matter. What you're asked
24 to do is to look at an interconnection agreement that you
25 have previously approved, look at a particular section

1 that deals with change in the law. This is Section 2.4, I
2 believe. And what you're specifically being asked to find
3 is that your policy that you have had in effect since
4 1996 is illegal, not unwise, not anything but illegal.
5 And the only way you can rule in MCI's favor here is to
6 determine that somehow the reinstatement of
7 Rule 51.711 has rendered your policy illegal or unlawful.

8 COMMISSIONER JABER: Mr. Edenfield, is that
9 really the case, that's it's illegal, or that it's been
10 superseded by the FCC decision?

11 MR. EDENFIELD: If you look at the language in
12 the interconnection agreement, it says when a change in
13 the law has rendered a provision unlawful, that the
14 Commission is to go back and fix it, basically. I'm kind
15 of -- obviously summarizing what it says. But the word
16 "unlawful" is in there, and that is a finding that you
17 will have to make to go back and grant what MCI is seeking
18 here.

19 COMMISSIONER JABER: Then I ask you the same
20 question I asked Mr. Melson: Do we have the discretion to
21 not approve language in agreements that have change of law
22 provisions in them?

23 MR. EDENFIELD: Mr. Melson was correct. Let me
24 answer your question by kind of going around about just a
25 little bit. Mr. Melson is correct in that this particular

1 provision was negotiated. It was not an arbitrated
2 agreement. I think in order to not approve a provision
3 that has been negotiated between the parties, you would
4 have to find that that negotiation in and of itself
5 violates federal law or is otherwise against the public
6 policy of the state of Florida. So absent -- I guess the
7 answer to your question is, yes, under those
8 circumstances, you probably could determine that you
9 wouldn't want it in an interconnection agreement, but I
10 don't think that's going to be present.

11 COMMISSIONER JABER: What did you say, the
12 latter part? Or that the provision is inconsistent with
13 the policy of the state of Florida?

14 MR. EDENFIELD: Sure. I don't see why you
15 wouldn't have the authority to look at Florida Law so long
16 as it doesn't conflict with federal law. The state of
17 Florida can basically, I don't want to say, do what it
18 wants to, but certainly the state of Florida has the right
19 to determine its own policy so long as that policy doesn't
20 conflict with the federal law.

21 CHAIRMAN DEASON: And that is federal law as
22 interpreted by the FCC through its rulemaking?

23 MR. EDENFIELD: In some instances, yes. I mean,
24 I hate to say that, and I know this is frustrating, and I
25 feel like Bill Clinton, I feel your pain. This is

1 definitely frustrating not only for the Commission who,
2 you know -- and I think this is something you had alluded
3 to, Commissioner Deason, and that is, you know, you don't
4 work for the federal government, you work for the state of
5 Florida. And, you know, it's frustrating for us.

6 I mean, we come to the Commission, and your
7 obligations under the Act are to look at interconnection
8 agreements, to arbitrate, to enforce, you know, to help
9 the parties reach agreement for, you know, what's best
10 under federal law and for the state of Florida. And it
11 seems like, you know, because the federal act is kind of
12 up in the air on a number of issues, it seems like we
13 spend a lot of time coming up with what's best and
14 everybody's reasonable interpretation. We get it down,
15 and then low and behold, two months later, the FCC comes
16 up and says either, oops, I've changed my mind, or we're
17 preempting, or whatever we're going to do, and it seems to
18 be turning the apple cart over. Unfortunately, I don't
19 know that I have an answer that is going to give you a
20 warm, fuzzy feeling. Obviously, you cannot violate
21 federal law.

22 COMMISSIONER JABER: I know this is not in the
23 record of this case, but just for my own knowledge, is
24 there any movement to have the federal law specifically
25 address reciprocal compensation in general or to revisit

1 the issue in Congress?

2 MR. EDENFIELD: My understanding is that there
3 is such a bill pending. I couldn't tell you the current
4 status of that, but I know that a bill was introduced to
5 remove reciprocal -- it may have been a little more
6 specific than just saying remove reciprocal compensation.
7 It dealt specifically with Internet service provider
8 traffic and reciprocal comp. I don't know that it was as
9 broad as to say all reciprocal comp will be removed from
10 the realm of jurisdiction. I'm not sure if that answered
11 your question precisely.

12 It's BellSouth's position in this case that
13 there is absolutely nothing illegal about this
14 Commission's policy, and that the reinstatement of
15 Rule 51.711 in no way questions the legality of what this
16 Commission has done which is, frankly, based on other
17 federal law.

18 CHAIRMAN DEASON: Mr. Edenfield, let me ask you
19 a question. If we look at the rule that has now been
20 reinstated -- and it's not relevant whether we agree or
21 disagree with the rule; that's not our function, as I
22 understand it. Our function is to look at that rule and
23 interpret it and enforce it based upon the facts of this
24 case. If we look at that rule and we interpret it that it
25 is an either/or test instead of the two-prong test, then

1 is our policy that was implemented in 1996 unlawful?

2 MR. EDENFIELD: In my opinion, no. Your policy
3 has just changed. There is a distinction between a policy
4 being -- the Commission changing a policy and the
5 Commission determining that a previous policy was illegal.

6 CHAIRMAN DEASON: But wouldn't that be the
7 reason that we would have to change our policy is because
8 it is not -- no longer consistent with our interpretation
9 of the FCC rule?

10 MR. EDENFIELD: That could certainly be a
11 reason. I mean, the Commission could determine that, you
12 know, factors have changed with the advent of competition,
13 for instance. Maybe it's no longer time to do things the
14 way we used to do it, so because of the advent of
15 competition, you decide that there's some policy that
16 you've had that has now been outmoded or outdated because
17 the market will take care of itself because of
18 competition. I'm not giving a specific example, but, I
19 mean, I can see instances in which the Commission's policy
20 may change for reasons other than --

21 CHAIRMAN DEASON: But let me interrupt. I don't
22 think we're here today -- and if I'm wrong on this,
23 correct me right now because I want to know what the rules
24 of the game are. I don't think that we're here today to
25 re-litigate our policy. We're here today to look at a

1 reinstated rule and interpret that rule based upon the
2 facts of this case.

3 MR. EDENFIELD: I think that's absolutely
4 correct. And to go one step further, I think your
5 specific function is to take a look at Rule 51.711 and see
6 whether anything in the reinstatement of that rule has
7 rendered unlawful your prior decision, your prior order to
8 have certain language put into the WorldCom/BellSouth
9 interconnection agreement. I mean, I think that's your
10 specific task because if you determine that nothing in
11 51.711 is unlawful or has rendered what I call the
12 functionality test, the functionality and geographic test
13 together unlawful, then you really have no basis --

14 CHAIRMAN DEASON: Okay. And I understand that.
15 My question though -- I want to be very specific. My
16 question is -- it's a hypothetical, but this is the
17 question: If the Commission looks at the FCC rule -- and
18 it doesn't matter whether we agree or disagree with the
19 rule -- we look at the rule as it is written, and we
20 interpret it based upon the facts, and we look at that
21 rule and we interpret that rule to be an either/or test
22 based upon the language in the rule, does that then make
23 our 1996 policy inconsistent with that and, therefore,
24 illegal and then would trigger the provisions within your
25 agreement that would necessitate a change in the

1 agreement?

2 MR. EDENFIELD: Let me think about that for one
3 second. If you determine it's either/or, have we now
4 triggered the unlawful provisions?

5 CHAIRMAN DEASON: Yes.

6 MR. EDENFIELD: I think that's probably correct.

7 CHAIRMAN DEASON: Okay. So then the real issue
8 gets right down to -- for us to decide in this case is,
9 this is a threshold issue, and that is, is it a two-prong
10 test, or is it an either/or test? And then we look at the
11 facts to see if WorldCom can meet one of the two if we say
12 it's either/or, or if they can present evidence and facts
13 to show that they meet both if we determine it's a
14 two-prong test.

15 MR. EDENFIELD: Well, if you determine it's a
16 two-prong test, then you will never reach that point
17 because you will have then automatically determined there
18 was nothing unlawful for you to take the next step.
19 However, I agree with your first analysis, and that is, if
20 you say it's either/or that you have developed the wrong
21 test, that you will then have to take the next step and go
22 in and look and see whether WorldCom has, in fact, met
23 either one of those two prongs.

24 CHAIRMAN DEASON: Okay. And this is very
25 important, and I appreciate you clarifying it. If we

1 determine it is a two-prong test, there's really no need
2 to go into any evidence on the facts because we have
3 already determined based on when we first arbitrated the
4 agreement that there was not the functionality or --
5 explain.

6 MR. EDENFIELD: Well, what has happened, if you,
7 in fact, determine that it's a two-prong test, you don't
8 need to go any further because, as Mr. Melson alluded in
9 his opening, WorldCom does not even allege in this action
10 that it satisfies the functionality prong. All that's
11 challenged is -- in fact, I think Mr. Melson -- I don't
12 mean to put words in his mouth, and I certainly don't want
13 to misquote him, but I think Mr. Melson would concede at
14 the way the contract is written that WorldCom would never
15 be able to satisfy the functionality test because it's
16 going to require you to have end office switches and
17 tandem switches, which they don't have.

18 CHAIRMAN DEASON: And I understand based upon my
19 reading of the testimony that they are not configured that
20 way. They provide service through a different mechanism
21 which they probably would argue is superior, but that's
22 okay, but it's a different arrangement.

23 MR. EDENFIELD: That's correct. And like I say,
24 they have not -- you know, as to functionality, their
25 position in this case appears to me to be that it is not a

1 requirement; therefore, we don't have to demonstrate that.
2 And in my reading of the complaint and the testimony is
3 that they have not even attempted to demonstrate to you
4 that they have satisfied a functionality prong because
5 their position is it was unlawful to have one to start
6 with.

7 CHAIRMAN DEASON: Thank you. And I'm going to
8 interrupt for just a second, and I will allow you to
9 continue. I want to ask the same question to Mr. Melson.
10 If we determine that the FCC rule is a two-prong test, is
11 there any need to litigate anything else, then the matter
12 goes away?

13 MR. MELSON: Commissioner, we pled this case as
14 a geographic coverage case. I think we have testimony
15 that supports comparable functionality as well, although
16 that is certainly not a focus. And let me be clear about
17 that. We don't perform a trunk-to-trunk switching
18 function. So if tandem functionality means trunk-to-trunk
19 switching, then we lose under a two-prong test. But if
20 tandem functionality means aggregation and distribution of
21 traffic over a wide geographic area, which is what the
22 Ninth Circuit said was a correct interpretation by the
23 Washington Commission, then we believe our testimony would
24 satisfy the functionality test, although that wasn't the
25 way we initially conceived the case.

1 CHAIRMAN DEASON: So then you're saying that
2 there would still need to be -- we would need to make the
3 determination as to what we consider to be tandem
4 functionality and whether it meets a comparability
5 standard within the FCC rule.

6 MR. MELSON: We believe it's a comparability
7 standard.

8 CHAIRMAN DEASON: Okay.

9 MR. EDENFIELD: Getting back to the standard,
10 and I alluded to this earlier. Two weeks ago with
11 Intermedia, the Commission addressed this very issue at
12 agenda, the tandem switching issue and the test that was
13 going to be required for a carrier to be able to recover
14 tandem switching. And without going through and reading
15 from the order, certainly the Commission has adopted a
16 two-prong test. So the other ramification of the
17 Commission at this point determining that it may have
18 been -- that its reading of 51.711 is that it is an
19 either/or scenario will have direct ramifications on this
20 most recent decision that it's rendered in the
21 ICG/DeltaCom and, more specifically, in the Intermedia
22 arbitration where I think that's been the most clarity
23 that the Commission has provided on this issue was two
24 weeks ago.

25 In the past, the Commission has kind of said,

1 you know, you have to look at functionality, you have to
2 look at geographic coverage, but since neither ICG nor
3 DeltaCom provided sufficient evidence of geographic
4 coverage, it kind of died on the vine right there.
5 Intermedia is the first case where the Commission has
6 really given us some -- what I call definitive guidance on
7 exactly what the test is, and the Commission -- at least
8 my reading of this order, certainly you would know better
9 than I as to what you meant, but certainly my reading of
10 this is that you have established a definite two-prong
11 test, that you have to demonstrate functionality, and you
12 have to demonstrate compatible geographic coverage.

13 Now, just skipping gears for just a moment. In
14 looking at federal law that has interpreted other
15 Commissions' decisions, I will tell you that the
16 Commissions around the country, from my reading, have done
17 basically every combination of the test that could be
18 done. You've had some Commissions that say there is
19 absolutely a two-prong test and that the ALEC has met
20 neither prong. You've had those that said there's a
21 two-prong test, and they have met one prong and not the
22 other, on both sides. You've had some Commissions say
23 it's a two-prong test and that the ALEC has managed to
24 satisfy both prongs of the test.

25 A number of those cases have been appealed.

1 There are a number of United States District Court
2 decisions interpreting the Commission's test, as you will.
3 Not a single one of those decisions that I have read has
4 overruled the Commission for adopting a two-prong test,
5 nor have they been overruled in the instances where they
6 adopted a one-prong test. So I don't think you're in a
7 situation where your policy of adopting a two-prong test
8 is going to be declared illegal at the appellate level
9 because, in fact, the appellate courts have looked at it.

10 There's even a Ninth Circuit Court Appeals case,
11 and if I may just briefly turn to that. The Ninth Circuit
12 Court of Appeals -- and this is one of those cases where
13 the underlying -- I think this was -- this is a California
14 case that the Commission had determined that the CLEC in
15 that instance had met both prongs of the test, it had
16 demonstrated functionality and geographic coverage, but
17 the important thing here is, in looking at the test, the
18 Ninth Circuit said, "The Commission properly considered
19 whether MFS's switch performs similar functions and serves
20 a geographic area comparable to US West's tandem switch."

21 In other words, the Ninth Circuit has taken a
22 look at the test, the two-prong test, which was adopted by
23 the California Commission, looked at it and decided there
24 was absolutely nothing wrong under the law with adopting a
25 two-prong test. The challenge was whether -- in finding

1 that MFS had satisfied both prongs of the test, whether
2 there was sufficient evidence. And then the Ninth Circuit
3 said, yes, you know, the Commission based its decision on
4 what it had in front of it, and there's nothing wrong with
5 it. But, again, I think the Commission can take away a
6 warm fuzzy for lack of a better word that the Ninth
7 Circuit Court of Appeals has looked at the two-prong test
8 and said there's nothing wrong with it. There is nothing
9 illegal about a two-prong test.

10 COMMISSIONER JABER: Do circuit courts of appeal
11 actually go to interpreting statutes, or are they similar
12 to the Florida courts, they wouldn't reweigh the evidence
13 or second-judge a Commission decision, but rather make a
14 statement as to whether there was sufficient evidence in
15 the record?

16 MR. EDENFIELD: Certainly the standard was
17 arbitrary and capricious as far as looking at was there
18 enough evidence to support its ultimate finding, but by
19 the same time, the Ninth Circuit, as in any federal court,
20 its first job is to look to make sure that there was no
21 violation of federal law. And it considered 51.711. Even
22 more telling is an Illinois District Court case.

23 COMMISSIONER JABER: And also, Mr. Edenfield, if
24 I could have the Intermedia order number? Do you have the
25 order number?

1 MR. EDENFIELD: It's actually on the Staff's
2 official recognition list, but it's order number -- you're
3 talking about the two-week-ago decision?

4 COMMISSIONER JABER: Yes.

5 MR. EDENFIELD: PSC-00-1519-FOF-TP issued
6 August 22nd, Docket Number 991854.

7 COMMISSIONER JABER: Thank you.

8 MR. EDENFIELD: And turning quickly to the
9 Illinois case. Extremely telling is a footnote that's
10 found in there. And this is another MCI case. And the
11 footnote reads, "MCI contends the Supreme Court's decision
12 in Iowa Utilities Board affects resolution of the tandem
13 interconnection rate dispute."

14 In other words, the same arguments that are
15 being made here today, the Supreme Court's decision is
16 somehow affected by reinstating 51.711. It's affected the
17 state of affairs as to entitlement to the tandem
18 interconnection rate. In this footnote, the district
19 court for Illinois said, "It does not. Iowa Utilities
20 Board upheld the FCC's pricing regulations, including the
21 'functionality/geography' test."

22 In other words, the U.S. District Court in
23 Illinois believes that 51.711 not only does it not render
24 the previous decision unlawful, it actually supports a
25 geography/functionality test which is what this Commission

1 has adopted. So, again, there is absolutely nothing
2 illegal or unlawful about what this Commission has done.
3 That the appellate courts that are looking at this, the
4 federal -- the Ninth Circuit Court of Appeals and the
5 other U.S. district courts that are looking at this are
6 finding it absolutely fine and lawful that Commissions are
7 adopting a dual two-prong test. Therefore, it's
8 BellSouth's contention that MCI or WorldCom cannot
9 possibly meet its burden of demonstrating unlawfulness.
10 It does not cite to a single case where an appellate court
11 of any nature has determined that a Commission adopting a
12 two-prong test has been illegal.

13 CHAIRMAN DEASON: Let me ask you this question.
14 If we determine that the two-prong test is appropriate and
15 that we can maintain our policy, then what about
16 WorldCom's argument that they meet both prongs of the
17 test? Is that relevant for us to consider in this
18 proceeding, or has that already been determined?

19 MR. EDENFIELD: Well, personally, I think it's
20 already been determined on behalf of -- at least
21 BellSouth's position has already been determined. That's
22 not what they raised in their complaint. What they raised
23 in their complaint was, we cannot possibly meet the
24 functionality prong of the test because of the way the
25 interconnection agreement is written. They have conceded

1 that they will never be able to satisfy the functionality
2 prong as set forth in the interconnection agreement.

3 CHAIRMAN DEASON: Well, now, Mr. Melson just
4 indicated that it depends on how you interpret comparable
5 functionality or whatever the appropriate terminology is.

6 MR. EDENFIELD: Well, I mean, with all due
7 respect to Mr. Melson, I think they are hedging their bets
8 a little bit. Certainly they came to this Commission
9 asking that the functionality prong be declared unlawful.
10 And now to come in at the last moment and say, well, we
11 also think that we may have satisfied it anyway is
12 certainly outside of what they have raised in their
13 complaint, certainly outside of the testimony that they
14 filed in this case.

15 They do mention something about functionality,
16 but they certainly don't apply it to their own network at
17 least as it exists in Florida, and that was in the
18 rebuttal, not even in the direct. So certainly any
19 testimony they have concerning functionality is
20 inappropriate, and it should not be considered to the
21 extent it even exists at all.

22 And if you even look at the way the issues are
23 phrased in this proceeding, they are all phrased around
24 geography. Not a single issue as framed in this case by
25 the parties mentions the word "functionality."

1 CHAIRMAN DEASON: Let me ask you this. When the
2 Commission -- and you said it was 1996, and I have no
3 reason to doubt that. When the Commission adopted its
4 policy in 1996 indicating that the -- to get tandem
5 switching that that function must be performed, when that
6 policy was adopted, what was the status of the FCC rule,
7 or did it even exist at that time?

8 MR. EDENFIELD: The FCC rule existed -- the
9 order that I'm referring to is the MFS order that is dated
10 December 16th, 1996. I can give you the docket number and
11 order number if you would like all that, but basically
12 you're talking about a December 16th, 1996 order. The
13 FCC's pricing rule was in existence before then,
14 51.711 was in existence, but it had been stayed on
15 October 15th, 1996.

16 CHAIRMAN DEASON: So at the time of that
17 decision, the FCC rule had been stayed.

18 MR. EDENFIELD: That's correct.

19 CHAIRMAN DEASON: So has this Commission made
20 any decision on this particular reciprocal compensation
21 issue now that the rule has been reinstated or is this the
22 first --

23 MR. EDENFIELD: Sure. The last three
24 arbitrations you did; Intermedia being two weeks ago. The
25 rule was reinstated by the Eighth Circuit Court of Appeals

1 on June 10th of 1999. So the rules have been back --
2 reinstated for a little over a year now.

3 COMMISSIONER JABER: Going to Intermedia, first
4 of all, I have a copy of the order. We have Staff's list,
5 but we don't have a copy of -- at least I don't.

6 MR. EDENFIELD: I have a copy if you would like
7 one.

8 COMMISSIONER JABER: I would like to look at
9 that because I would like to know who is on the panel, but
10 I also would like for you to tell me if the hearing was
11 had before there was an interpretation of the FCC rule. I
12 recognize that the decision was made after, but when was
13 the hearing held?

14 MR. EDENFIELD: Well, I'm not sure what you mean
15 by "interpretation of the FCC rule."

16 COMMISSIONER JABER: Well, the decision that we
17 have now that makes the reciprocal compensation more
18 final.

19 MR. EDENFIELD: I'm not sure I'm following you,
20 but let me try this.

21 COMMISSIONER JABER: Okay. Tell me when the
22 hearing was held.

23 MR. EDENFIELD: The hearing was held -- let me
24 see if it says it in the order. The hearing was held this
25 year. I mean, Intermedia is a fairly recent, you know,

1 maybe three or four months ago, hearing. The hearing was
2 held well after the reinstatement of the rule.

3 The Commission has considered and specifically
4 references Rule 51.711 in its deliberations and
5 considerations. And what it did, consistent with the
6 other Commissions around the country, it has read
7 51.711 in conjunction with 252(d)(2)(A) and with Paragraph
8 1090 of the First Report and Order. And that's consistent
9 with what it had done early back in 1996, with the
10 exception of -- since the price at 51.711 was stayed, it
11 just took that out of the analysis.

12 Now, this Commission has looked at specifically
13 referencing these particular rules after 51.711 had been
14 reinstated. I mean, this is absolutely nothing new to
15 this Commission.

16 COMMISSIONER JABER: So when we held the
17 Intermedia hearing, the FCC rule was reinstated -- had
18 been reinstated.

19 MR. EDENFIELD: That's correct. And the same is
20 true for DeltaCom, and I don't want to be quoted on this
21 one, but I'm pretty sure ICG as well.

22 Commissioner Jaber, if you don't mind, I have a
23 couple of copies of the Intermedia order if you would like
24 to see it real quick, and I will reference you to the
25 particular pages that I'm talking about. Let me refer you

1 initially to Page 9, which is where this topic is
2 discussed, and you will see there, initially you cite Rule
3 51.711. Then when you cite FCC-96-325, right under that,
4 that is Paragraph 1090 of the First Report and Order.

5 If you look on page -- I know you're trying to
6 read, and I'm sorry to do this to you. If you look on
7 Page 12 under Subsection B which says "Decision," if you
8 will look at the first paragraph, you will see what I'm
9 talking about, where you talk about the two criteria that
10 you have been faced with, similar functionality and
11 comparable geographic areas. There's your two-prong test.

12 Then you go on to say that your definition of a
13 tandem function -- if you look over on the next page on
14 13, the first nonindented paragraph, it says, "Witness
15 Jackson further explains," if you look after that
16 sentence, "We do not believe that this equates to
17 performing a tandem function" and it goes on to say what
18 we were talking about earlier, that it's going to have to
19 be trunk-to-trunk switching. Unless it's doing
20 trunk-to-trunk switching it's not really a tandem;
21 therefore, you don't get any money.

22 And if you want any further confirmation, if you
23 look on Page 14, look at the first full paragraph that
24 says, "We find the evidence of record" -- do you see
25 that -- "insufficient to determine if the second,

1 geographic criterion is met." In other words, that's your
2 second criteria.

3 I mean, there's absolutely no doubt in reading
4 this order that the Commission has already set out a
5 two-prong test with two criteria, functionality and
6 geographic coverage. And if you look at the way you have
7 defined functionality -- I think Mr. Melson may have even
8 conceded this a moment ago -- definitely it's a
9 trunk-to-trunk switching which WorldCom will tell you
10 right out they don't do.

11 COMMISSIONER JABER: Mr. Melson, that's a good
12 point, and my reading of Page 13, it does look like the
13 Commission, at least the panel on this case, did make a
14 statement that functionality would be defined by
15 trunk-to-trunk, and just focussing on what you said
16 earlier that if that's the definition of functionality,
17 then you clearly don't fit the definition.

18 MR. MELSON: And, Commission, we believe that is
19 not the correct definition of functionality. And other
20 Commissions and other courts have approved other
21 Commissions adopting a different definition of
22 functionality.

23 COMMISSIONER JABER: In other state
24 jurisdictions?

25 MR. MELSON: In other state jurisdictions.

1 COMMISSIONER JABER: But are those binding on
2 the Florida Commission?

3 MR. MELSON: No, no.

4 COMMISSIONER JABER: So if Florida has
5 consistently found that the test is one of two prongs,
6 that both criteria should be met and we've defined
7 functionality in this fashion consistently, then would you
8 concede that that's what needs to apply in this case?

9 MR. MELSON: Unfortunately, no, because we think
10 the -- the FCC rule does not use the word "functionality."
11 It does not talk about functionality. It talks about
12 providing a similar service. And we believe the transport
13 and termination service that's provided over WorldCom's
14 network configuration is comparable to the transport and
15 termination service that's provided over BellSouth's
16 network. We all use the term "functionality" to describe
17 that test, but at least within the four corners of the
18 rule, I don't believe the word "functionality" appears.

19 COMMISSIONER JABER: So if we all use the word
20 "functionality" to describe or to refer to similar
21 service, then that's our interpretation of the rule. Then
22 functionality is the way we have defined similar service
23 in the rule.

24 MR. MELSON: If that, in fact, is what you have
25 thought about and what you've done, yes, that could be an

1 interpretation of what you've done. Again, I don't
2 unfortunately know what's in the minds of the
3 Commissioners as these decisions are made. At some point,
4 I'd like to respond briefly on the Intermedia order when
5 Mr. Edenfield is finished.

6 CHAIRMAN DEASON: I'll give you that opportunity
7 because I will probably have some questions about the
8 order as well.

9 MR. EDENFIELD: Okay. And with that, I'm just
10 about done. The last point I would make is one that
11 Mr. Melson just brought up in responding to your question,
12 Commissioner Jaber. And that is that the different states
13 have done different things. I mean, as long as the
14 Florida Commission is acting within the parameters and not
15 doing something that is violating federal law, you have
16 the right to set your own policy for what's best for the
17 state of Florida. And what's best for the state of
18 Florida may not be what's best for the state of
19 North Carolina, California, or anywhere else, but so long
20 as you are acting within the guidelines of the federal
21 act and, again, as you've mentioned, Commissioner Deason,
22 you know, as interpreted occasionally by the FCC, then you
23 have the absolute right to set policy that's best for
24 Florida. That's what you've done in this instance.
25 You've determined that the best policy for Florida is, we

1 are not going to compensate people for functionality they
2 do not perform. And we would ask that on behalf of
3 BellSouth that you continue with your policy and that you
4 deny MCI the relief they seek. Thank you very much.

5 CHAIRMAN DEASON: Mr. Melson, let me ask you
6 this question, and I'll give you the opportunity to talk
7 about the order, but the comments triggered this question.

8 MR. MELSON: Sure.

9 CHAIRMAN DEASON: Are we here to interpret the
10 reinstated rule, or are we here to review the
11 appropriateness of our policy, or both?

12 MR. MELSON: I think you're here to interpret
13 the reinstated rule and to determine whether under that
14 rule a contract that requires both -- well, a contract
15 that is actually silent as to geographic comparability,
16 but a contract that requires a tandem switching function,
17 trunk-to-trunk switching to be performed is lawful, or
18 whether the FCC rule mandates tandem compensation based on
19 geographic coverage or geographic coverage plus some
20 network functionality that is less than trunk-to-trunk --

21 CHAIRMAN DEASON: Let me ask my question like
22 this. In reviewing the prefiled testimony, I get the
23 impression -- and correct me if I'm wrong -- that you're
24 not here wishing to re-litigate the Commission's policy
25 decision, but you're here to make the case that based upon

1 the reinstated rule, there's only one correct
2 interpretation, and that interpretation requires there to
3 be a change in your agreement with BellSouth.

4 MR. MELSON: Correct.

5 CHAIRMAN DEASON: Okay.

6 MR. MELSON: Correct.

7 CHAIRMAN DEASON: And let's get to the
8 Intermedia -- how do you mesh this then? Your reason for
9 being here and your arguments here that you're going to
10 make today through testimony, how do you mesh that with a
11 decision apparently the Commission has already made in the
12 Intermedia decision? And apparently this decision was
13 made in full recognition that the FCC rule has been
14 reinstated.

15 MR. MELSON: Commission, I frankly read this
16 decision quite differently than Mr. Edenfield does.

17 COMMISSIONER JACOBS: Let me kind of ask this,
18 Mr. Edenfield. Is it your reading that we announced a --
19 and that not only was there a geographic test, but there
20 must also be the functionality test in conjunction with
21 that?

22 MR. EDENFIELD: Absolutely.

23 COMMISSIONER JACOBS: Because I'm reading
24 through this and while we do address both prongs, I don't
25 see where we actually announce that there must be combined

1 tests.

2 MR. EDENFIELD: I read on Page 12 of the
3 decision right under Subparagraph B where it says,
4 "Decision," you are presented with two criteria --

5 COMMISSIONER JACOBS: I agree that we evaluated
6 both criteria, but I think I want to hear argument as to
7 whether or not -- and I think that was
8 Commissioner Deason's inquiry, is that we announced in
9 this decision that we are absolutely holding a
10 two-prong-and test, or is it an or test.

11 MR. MELSON: And, Commissioner Jacobs, that was
12 the point I wanted to make about Intermedia, and I think
13 you focussed right on the critical issue. Yes, you
14 consider two criteria. The decision does not say they are
15 two cumulative criteria, and you have to meet both. It
16 simply says, you're presented with two criteria. It
17 doesn't answer the question of whether it's either/or or
18 whether it is cumulative.

19 If you look at the paragraph on Page 14 that
20 Mr. Edenfield quoted to you, "We find the evidence of
21 record insufficient to determine if the second, geographic
22 criterion is met," that could mean the second alternative
23 criterion, or it could mean the second part of a two-part
24 test if you read that sentence in isolation, but continue
25 with the paragraph, "We are unable to reasonably determine

1 if Intermedia is actually serving the areas they have
2 designated as local calling areas. As such, we are unable
3 to determine that Intermedia should be compensated at the
4 tandem rate based on geographic coverage."

5 I read that to be, if they had proved they were
6 serving comparable geographic, they should be compensated
7 at the tandem rate based on that criterion. So while this
8 order is obviously subject to two different
9 interpretations, I see nothing in here that squarely
10 addresses whether it's a two-prong test or either/or test,
11 but I think the weight of the language suggests that you
12 have considered it to be an either/or test at least in
13 these more recent decisions since the rule was reinstated.

14 COMMISSIONER JACOBS: But I also have to
15 acknowledge that we didn't reject that notion either. I
16 don't think this rejects Mr. Edenfield's premise either.

17 MR. MELSON: I'm just saying that I don't read
18 this decision to establish a two-prong test. I think it
19 probably is consistent with either a two-prong test or an
20 either/or test. I think it supports an either/or test. I
21 think we're going to show you today why an either/or test
22 is appropriate if -- well, I don't know if we're going to
23 show you. We have argued about it, and it's ultimately a
24 legal question. But I don't think -- if you decided
25 clearly in an order and you said there is a two-prong

1 test, or if you decided clearly in an order and said there
2 is an either/or test, I don't think either of those
3 results would be inconsistent on its face with the
4 Intermedia decision. I think you really didn't get there.

5 MR. EDENFIELD: And I respectfully disagree with
6 that, and let me point to where I'm referencing here.
7 Look on that same Page 14, Commissioner Jacobs. Do you
8 see the paragraph that says, "As mentioned above, neither
9 do we find"? Look at the last sentence in that paragraph.
10 "This is consistent with past decisions of the
11 Commission."

12 Well, the consistency with past Commission
13 decisions is that this Commission has always held, always
14 held that it will not compensate someone for a function
15 they do not perform, and I think there is the tie-in
16 between the two. The one thing that is consistent through
17 all the decisions even while the rule was stayed and
18 vacated was that this Commission will never, ever
19 compensate someone for a function they do not perform;
20 therefore, that's always going to be a prong of the test,
21 always. And if you throw geographic coverage in there, it
22 almost by definition makes it a two-prong test. I mean,
23 to be consistent, you would have to consider functionality
24 because that's what you've always considered, and that
25 goes all the way back to MFS and the MCI. Both of those

1 were Sprint arbitrations, but that's where the policy was
2 developed.

3 And I think by putting that sentence in there,
4 "This is consistent with past decisions," you're
5 explicitly recognizing that you have always held that you
6 will not compensate someone for functions they don't
7 perform. And in this case, you know, as we talked about,
8 the functionality for tandem switching has been defined as
9 trunk-to-trunk switching which WorldCom does not do.

10 COMMISSIONER JACOBS: Okay.

11 CHAIRMAN DEASON: Thank you all for that. It
12 was very educational and enlightening.

13 MR. MELSON: We appreciate your taking the time
14 with us.

15 CHAIRMAN DEASON: We're going to take a recess.
16 Did Staff have anything to add at this point?

17 MR. VACCARO: Nothing to add, sir.

18 CHAIRMAN DEASON: All right. We will take a
19 recess and reconvene at eleven o'clock.

20 (Brief recess.)

21 CHAIRMAN DEASON: Call the hearing back to
22 order. I believe we're prepared now to swear in the
23 witnesses. We have two witnesses. Will you both stand
24 and raise your right hand.

25 (Witnesses collectively sworn.)

1 CHAIRMAN DEASON: Thank you. Please be seated.

2

- - - - -

3

MARK E. ARGENBRIGHT

4

was called as a witness on behalf of MCImetro Access

5

Transmission Services LLC and MCI WorldCom Communications,

6

Inc. and, having been duly sworn, testified as follows:

7

BY MR. MELSON:

8

Q Mr. Argenbright, would you state your name and
9 address for the record, please.

10

A Mark Argenbright. My address is Six6 Concourse
11 Parkway, Atlanta, Georgia.

12

Q And by whom are you employed, and in what
13 capacity?

14

A I'm employed by WorldCom as a senior staff
15 specialist in state regulatory policy group.

16

Q And have you prefiled direct testimony in this
17 docket consisting of 20 pages?

18

A I have.

19

Q Do you have any changes or corrections to that
20 testimony?

21

A No.

22

Q If I were to ask you the same questions today,
23 would your answers be the same?

24

A They would.

25

MR. MELSON: Mr. Chairman, I ask that

1 Mr. Argenbright's direct testimony be inserted in the
2 record as though read.

3 CHAIRMAN DEASON: Let me ask one question.
4 Doesn't this witness address Issue 4?

5 MR. MELSON: Yes.

6 CHAIRMAN DEASON: Are you just going to go ahead
7 and insert testimony?

8 MR. MELSON: I would insert it, but I think it
9 and the comparable testimony from BellSouth is all mooted
10 now in light of our stipulation.

11 CHAIRMAN DEASON: Very well. The direct
12 testimony will be inserted into the record.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY OF MARK ARGENBRIGHT**

3 **ON BEHALF OF**

4 **MCImetro ACCESS TRANSMISSION SERVICES, LLC**

5 **AND MCI WORLDCOM COMMUNICATIONS, INC.**

6 **DOCKET NO. 991755-TP**

7 **JUNE 16, 2000**

8

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

10 A. My name is Mark E. Argenbright. My business address is Six Concourse
11 Parkway, Suite 3200, Atlanta, Georgia 30328.

12 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

13 A. I am employed by WorldCom, Inc. in the Law and Public Policy group and hold
14 the position of Sr. Staff Specialist, State Regulatory Policy. In my current
15 position I assist in the development and coordination of WorldCom's regulatory
16 and public policy initiatives for the company's domestic operations. These
17 responsibilities require that I work closely with our state regulatory groups across
18 the various states, including Florida.

19 **Q. PLEASE DESCRIBE YOUR TELECOMMUNICATIONS BACKGROUND
20 AND EDUCATION.**

21 A. My previous position within WorldCom was Senior Manager, Regulatory
22 Analysis, in which I was responsible for performing regulatory analysis in support
23 of a wide range of the company's activities. Prior to that, I was employed by the

1 Anchorage Telephone Utility (now known as Alaska Communications Systems)
2 as a Senior Regulatory Analyst and American Network, Inc. as a Tariff
3 Specialist. I have worked in the telecommunications industry for sixteen years,
4 with the majority of my positions in the area of regulatory affairs. I received a
5 Bachelor of Science Degree in Business Administration from the University of
6 Montana in 1980.

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

8 A. The purpose of my testimony is to explain why MCImetro Access Transmisson
9 Services, LLC (“MCIIm”) and MCI WORLDCOM Communications, Inc.
10 (“MWC”) are entitled to have their interconnection agreements amended to reflect
11 the rules embodied in the reinstated FCC Rule 51.711, and to receive credits for
12 amounts to which they are entitled under the rule.

13 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

14 A. First I will provide some background to the parties’ dispute. Then I will address
15 each of the four issues that have been identified in this docket.

16 **Q. WHAT IS THE NATURE OF THIS DISPUTE?**

17 A. This dispute concerns certain reciprocal compensation language that the Florida
18 Public Service Commission (the “Commission”) ordered in the MCI-BellSouth
19 arbitration during the time that the FCC’s pricing rules were stayed. This
20 language requires that MCIIm and MWC be compensated for call termination
21 based solely on the end office interconnection rate, even when their switches
22 serve geographic areas comparable to the areas served by BellSouth tandem
23 switches. MCIIm and MWC are requesting that their contracts be changed based

1 on the reinstated FCC pricing rules that entitle them to be paid both the tandem
2 interconnection rate and the end office interconnection rate when their switches
3 serve an area comparable to that served by BellSouth tandem switches. They also
4 are seeking a credit for amounts to which they are entitled under the reinstated
5 rules.

6 **Q. PLEASE EXPLAIN THE TERMS “TRANSPORT AND TERMINATION,”**
7 **“END OFFICE INTERCONNECTION RATE” AND “TANDEM**
8 **INTERCONNECTION RATE.”**

9 A. In its First Report and Order (“Local Competition Order”), the FCC used the term
10 “transport and termination” to refer to the service of transporting and switching
11 traffic from an interconnection point between two carriers’ networks to a
12 customer’s premises. (Local Competition Order, ¶¶ 1039-40.) The FCC defined
13 “transport” for reciprocal compensation purposes to mean “the transmission of
14 terminating traffic . . . from the interconnection point between the two carriers to
15 the terminating carrier’s end office switch that directly serves the called party (or
16 equivalent facility provided by a non-incumbent carrier).” Local Competition
17 Order, ¶ 1039. “Termination” was defined for reciprocal compensation purposes
18 as “the switching of traffic . . . at the terminating carrier’s end office switch (or
19 equivalent facility) and delivery of that traffic from that switch to the called
20 party’s premises.” Local Competition Order, ¶ 1040. The carrier providing the
21 transport and termination service is entitled to receive reciprocal compensation
22 from the carrier that originated the call.

23

1 “End office interconnection rate” is the term the Commission has used to describe
2 the basic reciprocal compensation rate that applies when no tandem switching is
3 involved in the completion of a call. “Tandem interconnection rate” is the term
4 the Commission has used to describe the additional rate to be charged to the
5 originating carrier when a tandem switch is used in the completion of a call.

6

7 **Q. WHAT DOES THE RECIPROCAL COMPENSATION LANGUAGE IN**
8 **QUESTION IN THE PARTIES’ INTERCONNECTION AGREEMENTS**
9 **PROVIDE?**

10 **A. Attachment IV of the agreements provide as follows:**

11 2.4 MCIIm may designate an IP [interconnection point] at any
12 Technically Feasible point including but not limited to any
13 electronic or manual cross-connect points, collocations, telco
14 closets, entrance facilities, and mid-span meets where mutually
15 agreed upon. The transport and termination charges for local
16 traffic flowing through an IP shall be as follows:

17

18 2.4.1 When calls from MCIIm are terminating on BellSouth's
19 network through the BellSouth tandem, MCIIm will pay to
20 BellSouth the tandem switching rate.

21

22 2.4.2 When BellSouth terminates calls to MCIIm's subscribers
23 using MCIIm's switch, BellSouth shall pay to MCIIm the

1 appropriate interconnection rate(s). BellSouth shall not
2 compensate MCI for transport and tandem switching unless
3 MCI actually performs each function.

4
5 2.4.3 MCI may choose to establish direct trunking to any given
6 end office. If MCI leases trunks from BellSouth, it shall pay
7 charges for dedicated or common transport. For calls terminating
8 from MCI to subscribers served by these directly trunked end
9 offices, MCI shall also pay BellSouth the end office switching
10 rate. For BellSouth traffic terminating to MCI over the direct
11 end office trunking, BellSouth shall pay the same rate.

12 **Q. HOW WAS THIS LANGUAGE INCORPORATED INTO THE MCI**
13 **INTERCONNECTION AGREEMENT?**

14 A. The Commission ordered this language in its Order No. PSC-97-0309-FOF-TP,
15 dated March 21, 1997 in the MCI-BellSouth arbitration case. In rejecting MCI's
16 position that it was entitled to the tandem interconnection rate for local traffic
17 terminated on its network, the Commission expressly noted that the FCC rules
18 forming the basis of MCI's rationale were then stayed.

19 **Q. HOW DID THIS RECIPROCAL COMPENSATION LANGUAGE**
20 **BECOME PART OF THE MWC INTERCONNECTION AGREEMENT?**

21 A. This language became part of the MWC interconnection agreement when MWC
22 gave notice to the Commission by letter dated June 28, 1999 of its adoption of the
23 MCI interconnection agreement (except for Attachment VIII) pursuant to

1 Section 252(i) of the Telecommunications Act of 1996 (the "Act"). Pursuant to
2 an agreement between MWC and BellSouth filed with the June 28 letter, MWC
3 and BellSouth incorporated all sections of the MCIIm interconnection agreement,
4 as amended, except for Attachment VIII. The effective date of the MWC
5 interconnection agreement is December 1, 1998. The Commission approved the
6 MWC interconnection agreement by order dated September 20, 1999.

7 **Q. WHAT PROVISIONS OF THE ACT ARE RELEVANT HERE?**

8 A. Section 251(b)(5) of the Act imposes on each local exchange carrier "[t]he duty to
9 establish reciprocal compensation arrangements for the transport and termination
10 of telecommunications." Section 252(d)(2)(A) of the Act further provides as
11 follows:

12 For the purposes of compliance by an incumbent local
13 exchange carrier with section 251(b)(5), a State commission shall
14 not consider the terms and conditions for reciprocal compensation
15 to be just and reasonable unless --

16 (i) such terms and conditions provide for
17 the mutual and reciprocal recovery by each carrier
18 of costs associated with the transport and
19 termination on each carrier's network facilities of
20 calls that originate on the network facilities of the
21 other carrier; and

22 (ii) such terms and conditions determine
23 such costs on the basis of a reasonable

1 approximation of the additional costs of terminating
2 such calls.

3

4 **Q. HAS THE FCC INTERPRETED THE RECIPROCAL COMPENSATION**
5 **PROVISIONS OF THE ACT WITH REGARD TO THE SYMMETRY**
6 **ISSUE IN THIS CASE?**

7 A. Yes. The FCC addressed the symmetry issue in this case in FCC Rule 51.711(a),
8 which I quote in full later in my testimony. That rule provides, among other
9 things, that ALECs may recover the tandem interconnection rate when an ALEC
10 switch “serves a geographic area comparable to the area served by the incumbent
11 LEC’s tandem switch.”

12 **Q. PLEASE EXPLAIN THE TIMING OF THE STAY OF FCC RULE 51.711**
13 **AND THE OTHER FCC PRICING RULES, AND OF THE LIFTING OF**
14 **THE STAY.**

15 A. By order filed on October 15, 1996, the Eighth Circuit stayed the FCC’s pricing
16 rules, including Rule 51.711. *Iowa Util. Bd. v. Fed. Communications Comm’n*,
17 109 F.3d 418 (8th Cir. 1996). The Eighth Circuit vacated the pricing rules on
18 jurisdictional grounds on July 18, 1997. *Iowa Util. Bd. v. Fed. Communications*
19 *Comm’n*, 120 F.3d 753 (8th Cir. 1997). On January 25, 1999, the United States
20 Supreme Court reversed, holding that the FCC did have jurisdiction to issue its
21 pricing rules. *AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366 (1999). On remand,
22 the Eighth Circuit issued an order reinstating the pricing rules, including Rule
23 51.711. *Iowa Util. Bd. v. FCC*, No. 96-3321 (8th Cir. June 10, 1999).

1 **Q. HOW DID THIS DISPUTE ARISE BETWEEN THE PARTIES?**

2 A. After the pricing rules were reinstated, MCIIm requested BellSouth to negotiate an
3 amendment to its interconnection agreement. By letter dated July 8, 1999, MCIIm
4 notified BellSouth that it was requesting BellSouth to negotiate amendments to
5 the interconnection agreement that conformed its reciprocal compensation
6 provisions to FCC Rule 51.711. A copy of this letter is attached to my testimony
7 as Exhibit ___ (MEA-1). BellSouth responded by letter dated July 30, 1999 and
8 refused to negotiate. A copy of this letter is attached as Exhibit ___ (MEA-2).
9 By letter dated August 10, 1999, MCIIm informed BellSouth that it intended to file
10 an enforcement complaint seeking an amendment incorporating the requirements
11 of Rule 51.711 and payment of reciprocal compensation in accordance with those
12 requirements on a retroactive basis. A copy of this letter is attached as Exhibit
13 ___ (MEA-3). BellSouth responded by letter dated November 18, 1999,
14 claiming, despite the clear language of Rule 51.711, that the MCIIm Agreement
15 calls for symmetry in reciprocal compensation. A copy of this letter is attached as
16 Exhibit ___ (MEA-4).

17 **Q. WHAT IS THE BASIS OF MWC'S CLAIM IN THIS CASE?**

18 A. As I have noted, MWC has opted into most parts of the MCIIm-BellSouth
19 interconnection agreement, including all of Attachment IV, which contains the
20 reciprocal compensation language at issue here. Paragraph 3 of MWC's
21 agreement with BellSouth adopting most of the MCIIm interconnection agreement
22 states as follows: "[MWC] and BellSouth shall accept and incorporate any
23 amendments to the Florida BellSouth/MCIIm Interconnection Agreement, which

1 relate to the above attachments and Terms and Conditions, executed as a result of
2 any final judicial, regulatory, or legislative action.” MWC therefore stands in the
3 same position as MCI in this docket.

4
5 Issue 1: Under FCC Rule 51.711, would MCI and MWC be entitled to
6 be compensated at the sum of the tandem interconnection rate and the end
7 office interconnection rate for calls terminated on their switches if those
8 switches serve a geographic area comparable to the area served by
9 BellSouth's tandem switches?

10
11 **Q. PLEASE EXPLAIN HOW RECIPROCAL COMPENSATION RATES FOR**
12 **BELLSOUTH WERE DETERMINED IN FLORIDA.**

13 A. In its Local Competition Order, the FCC determined that states had three options
14 for establishing transport and termination rates: they could adopt rates based on
15 an economic cost study; they could adopt a default rate; or, in some
16 circumstances, they could order a bill and keep arrangement. Local Competition
17 Order, ¶ 1055. During the AT&T and MCI arbitrations, the Florida Public
18 Service Commission elected to use an economic cost study to determine the rates.
19 In Order No. PSC-97-0309-FOF-TP in the MCI arbitration, the Commission
20 ordered an end office interconnection rate of \$.002 per minute of use and a
21 tandem interconnection rate of \$.00125 per minute of use.

1 **Q. WHAT PRINCIPLES DID THE FCC ESTABLISH IN THE LOCAL**
2 **COMPETITION ORDER FOR RECIPROCAL COMPENSATION TO BE**
3 **PAID TO ALECS?**

4 A. After establishing how reciprocal compensation rates would be determined for
5 incumbent local exchange companies (“ILECs”), the FCC turned to the question
6 of what rates should apply to alternative local exchange companies (“ALECs”).
7 The FCC concluded that the ILECs’ reciprocal compensation rates should be
8 adopted as the “presumptive proxy” for the ALECs’ rates – in other words, the
9 rates were required to be the same. Local Competition Order, ¶ 1085. The only
10 exception to this rule arises when an *ALEC* establishes that its transport and
11 termination costs are *higher* than those of the ILEC. Local Competition Order, ¶
12 1089; FCC Rule 51.711(b). The FCC provided a number of reasons for ordering
13 symmetrical treatment, including the following:

- 14 1. Typically the ILEC and ALEC will be providing service in the same
15 geographic area, so their forward-looking costs should be the same in most
16 cases. Local Competition Order, ¶ 1085.
- 17 2. Imposing symmetrical rates would not reduce carriers’ incentives to
18 minimize their internal costs. ALECs would have the correct incentives to
19 minimize their costs because their termination revenues would not vary
20 directly with changes in their costs. At the same time, ILECs would have
21 the incentive to reduce their costs because they could be expected to
22 transport and terminate much more traffic originating on their own
23 networks than on ALECs’ networks. Thus, even assuming ILEC cost

1 reductions immediately were translated into lower transport and
2 termination rates, any reduction in reciprocal compensation revenues
3 would be more than offset by having a more cost-effective network. Local
4 Competition Order, ¶ 1086.

5 3. Symmetrical rates might reduce ILECs' ability to use their bargaining
6 power to negotiate high termination rates for themselves and low
7 termination rates for ALECs. Local Competition Order, ¶ 1087.

8 **Q. WHAT DID THE FCC CONCLUDE CONCERNING SYMMETRY OF**
9 **TANDEM INTERCONNECTION RATES?**

10 A. The FCC stated the following in paragraph 1090 of the Local Competition
11 Order:

12 We find that the "additional costs" incurred by a LEC when
13 transporting and terminating a call that originated on a competing
14 carrier's network are likely to vary depending on whether tandem
15 switching is involved. We, therefore, conclude that states may
16 establish transport and termination rates in the arbitration process
17 that vary according to whether the traffic is routed through a
18 tandem switch or directly to the end-office switch. In such event,
19 states shall also consider whether new technologies (*e.g.*, fiber ring
20 or wireless networks) perform functions similar to those performed
21 by an incumbent LEC's tandem switch and thus, whether some or
22 all calls terminating on the new entrant's network should be priced
23 the same as the sum of transport and termination via the incumbent

1 LEC's tandem switch. *Where the interconnecting carrier's*
2 *switch serves a geographic area comparable to that served by the*
3 *incumbent LEC's tandem switch, the appropriate proxy for the*
4 *interconnecting carrier's additional costs is the LEC tandem*
5 *interconnection rate.*

6 (Emphasis added.)

7 **Q. PLEASE EXPLAIN WHAT THIS LANGUAGE MEANS IN PRACTICAL**
8 **TERMS.**

9 A. The FCC reached three conclusions. First, it is appropriate to establish an
10 additional rate for ILECs when they use a tandem switch in the transport and
11 termination of ALECs' local traffic. Second, states may consider whether some
12 or all calls terminated by an ALEC may be priced at that higher rate if the ALEC
13 uses alternative technologies or architectures to perform functions similar to
14 those performed by the ILEC's tandem switch. Third, the higher rate *must* be
15 applied when the ALEC's switch serves a geographic area comparable to that
16 served by the ILEC's tandem switch.

17 **Q. MUST AN ALEC PROVIDE TANDEM SWITCHING, AS BELLSOUTH**
18 **CONTENDS, TO OBTAIN THE HIGHER TANDEM RATE?**

19 A. Absolutely not. When the ALEC's switch serves an area comparable to the area
20 served by an ILEC tandem switch, the ALEC *automatically* is entitled to receive
21 the tandem interconnection rate in addition to the end office interconnection rate.
22 In other words, the FCC created a "safe harbor" for ALECs that meet the

1 geographic comparability test. When that test is satisfied, no proof of functional
2 comparability is required and the ALEC is entitled to the higher rate.

3 **Q. HOW DOES THE FCC'S CODIFICATION OF THIS PRINCIPLE BEAR**
4 **ON YOUR ANALYSIS?**

5 A. It confirms my analysis. FCC Rule 51.711(a) provides as follows:

6 (a) Rates for transport and termination of local
7 telecommunications traffic shall be symmetrical, except as
8 provided in paragraphs (b) and (c) of this section. [These
9 exceptions do not apply here.]

10 (1) For purposes of this subpart, symmetrical rates are rates that a
11 carrier other than an incumbent LEC assesses upon an incumbent
12 LEC for transport and termination of local telecommunications
13 traffic equal to those that the incumbent LEC assesses upon the
14 other carrier for the same services.

15 (2) In cases where both parties are incumbent LECs, or neither
16 party is an incumbent LEC, a state commission shall establish the
17 symmetrical rates for transport and termination based on the larger
18 carrier's forward-looking costs.

19 ***(3) Where the switch of a carrier other than an incumbent LEC***
20 ***serves a geographic area comparable to the area served by the***
21 ***incumbent LEC's tandem switch, the appropriate rate for the***
22 ***carrier other than an incumbent LEC is the incumbent LEC's***
23 ***tandem interconnection rate.***

1 (Emphasis added.) The FCC could not have been more clear. The geographic
2 comparability rule was adopted without exception or qualification.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

4 A. The first issue must be answered in the affirmative. So long as MCI's and
5 MWC's switches serve a geographic area comparable to the area served by
6 BellSouth's tandem switches, MCI and MWC are entitled to receive the tandem
7 interconnection rate as well as the end office interconnection rate.

8 Issue 2: Do MCI's and MWC's switches serve geographic areas
9 comparable to those served by BST tandem switches?

10 **Q. PLEASE COMPARE THE MCI/MWC LOCAL NETWORK TO**
11 **BELLSOUTH'S LOCAL NETWORK IN GENERAL.**

12 A. MCI and MWC use state-of-the-art equipment and design principles based on
13 technology available today. Their local network has been built within the past
14 few years using optical fiber rings with SONET transmission, which makes it
15 possible to access and serve a large geographic area from a single switch. In
16 addition, MCI and MWC use combinations of DS1 loops and transport leased
17 from BellSouth to extend the reach of their network. In contrast, BellSouth's
18 network, developed over many decades, employs an architecture characterized by
19 a large number of switches within a hierarchical system with relatively short
20 copper based subscriber loops.

1 **Q. WHAT ARE THE GEOGRAPHIC AREAS AT ISSUE IN THIS CASE?**

2 A. There are two geographic areas at issue. The first is the area including Orlando in
3 central Florida. The second is the area including Miami and Ft. Lauderdale in
4 south Florida.

5 **Q. PLEASE DESCRIBE MCIIm'S LOCAL NETWORK IN THE ORLANDO**
6 **AREA.**

7 A. MCIIm has a single switch serving the Orlando area. That switch provides service
8 to fourteen rate centers, six of which also are served by BellSouth via its tandem
9 and end office architecture. The eight rate centers served by MCIIm that are not
10 served by BellSouth are in Sprint's service territory. MCIIm's Orlando switch is
11 supported by fifteen OC3 SONET systems, twenty-five OC12 systems and forty
12 OC48 systems. The geographic area served by MCIIm's Orlando switch is shown
13 in Exhibit ___ (MEA-5) to my testimony. This area is comparable to the
14 geographic area served by BellSouth tandem switches in the Orlando region.

15 **Q. PLEASE DESCRIBE MCIIm'S LOCAL NETWORK IN THE SOUTH**
16 **FLORIDA AREA.**

17 A. MCIIm and MWC have three switches in south Florida, two located in Miami and
18 one in Pompano Beach. These switches serve twelve rate centers, all of which are
19 served by BellSouth with its tandem and end office architecture. MCIIm's and
20 MWC's south Florida switches are supported by one OC3 SONET system, six
21 OC12 systems and fifty-seven OC48 systems. The geographic area served by the
22 MCIIm/MWC network in south Florida is shown in Exhibit ___ (MEA-6) to my

1 testimony. This area is comparable to the geographic area served by BellSouth
2 tandem switches in the south Florida region.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

4 A. Issue 2 should be answered in the affirmative. MCI's and MWC's switches
5 serve geographic areas comparable to those served by BellSouth tandem switches.

6

7 Issue 3: Should BellSouth be required, pursuant to Part A Section 2.2 or
8 2.4 of the interconnection agreement, to execute amendments to its
9 interconnection agreements with MCI and MWC requiring BellSouth to
10 compensate MCI and MWC at the sum of the tandem interconnection
11 rate and the end office interconnection rate for calls terminated on their
12 switches that serve a geographic area comparable to the area served by
13 BellSouth's tandem switches?

14

15 **Q. WHAT IS THE PRINCIPAL CHANGE-OF-LAW PROVISION THAT**
16 **MCI AND MWC ARE RELYING ON TO REQUIRE AN AMENDMENT**
17 **TO THE INTERCONNECTION AGREEMENTS?**

18 A. The principal change-of-law provision that is relevant here is Part A, Section 2.2,
19 which states as follows:

20 In the event the FCC or the State regulatory body promulgates rules or
21 regulations, or issues orders, or a court with appropriate jurisdiction issues
22 orders, which make unlawful any provision of this Agreement, the parties
23 shall negotiate promptly and in good faith in order to amend the

1 Agreement to substitute contract provisions which are consistent with such
2 rules, regulations or orders. In the event the parties cannot agree on an
3 amendment within thirty (30) days from the date any such rules,
4 regulations or orders become effective, then the parties shall resolve their
5 dispute under the applicable procedures set forth in Section 23 (Dispute
6 Resolution Procedures) hereof.

7
8 Although I am not a lawyer, I can observe that the language the Commission
9 ordered in Attachment IV, Sections 2.4, 2.4.1, 2.4.2 and 2.4.3 prohibits MCIIm
10 and MWC from recovering the tandem interconnection rate even when their
11 switches cover a geographic area comparable to the area covered by BellSouth
12 tandem switches. Thus, this reciprocal compensation language does not meet the
13 requirements of the Act as interpreted by the FCC in its Rule 51.711. Under Part
14 A, Section 2.2 of the parties' interconnection agreements, amending these
15 provisions is therefore appropriate.

16 **Q. PLEASE EXPLAIN HOW PART A, SECTION 2.4 MIGHT APPLY**
17 **HERE.**

18 A. Part A, Section 2.4, states as follows:

19 In the event that any final and nonappealable legislative, regulatory,
20 judicial or other legal action materially affects any material terms of this
21 Agreement, or the ability of MCIIm or BellSouth to perform any material
22 terms of this Agreement, or in the event a judicial or administrative stay of
23 such action is not sought or granted, MCIIm or BellSouth may, on thirty

1 (30) days written notice (delivered not later than thirty (30) days following
2 the date on which such action has become legally binding and has
3 otherwise become final and nonappealable) require that such terms be
4 renegotiated, and the Parties shall renegotiate in good faith such mutually
5 acceptable new terms as may be required. In the event that such new
6 terms are not renegotiated within ninety (90) days after such notice, the
7 dispute shall be resolved in accordance with Section 23 (Dispute
8 Resolution Procedures) of this Agreement.

9
10 MCIIm's letter to BellSouth requesting negotiation is dated July 8, 1999, and thus
11 was sent within thirty days of the Eighth Circuit's order, but obviously not within
12 thirty days of the Supreme Court's decision. Thus, if the Commission were to
13 determine that the lifting of the stay became final and nonappealable when the
14 Eighth Circuit issued its order, Section 2.4 would apply here, but otherwise it
15 would not. I should note that MCIIm's and MWC's position is that the lifting of
16 the stay became final and nonappealable when the Supreme Court issued its
17 decision. If the Commission agrees, Section 2.4 would not apply. In any event,
18 Section 2.2 applies regardless of whether Section 2.4 is determined to apply.

19 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.**

20 A. Issue 3 should be answered in the affirmative. Under Part A, Section 2.2 of the
21 interconnection agreements, MCIIm and MWC are entitled to have their
22 agreements amended because the agreements' reciprocal compensation provisions
23 are contrary to the reinstated FCC Rule 51.711. Further, if Part A, Section 2.4 is

1 deemed applicable, it would provide an independent reason for requiring the
2 agreements to be amended.

3
4 Issue 4: Are MCIIm and MWC entitled to a credit from BellSouth equal to
5 the additional per minute amount of the tandem interconnection rate from
6 January 25, 1999 to the earlier of (i) the date such amendments are
7 approved by the Commission, or (ii) the date the interconnection
8 agreements are terminated?

9
10 **Q. WHAT IS MCIIm'S AND MWC'S POSITION ON THE ISSUE OF**
11 **WHETHER THEY SHOULD RECEIVE CREDITS FOR THE**
12 **ADDITIONAL PER MINUTE AMOUNT OF TANDEM**
13 **INTERCONNECTION CHARGES THAT BELLSOUTH HAS FAILED TO**
14 **PAY SINCE THE SUPREME COURT'S IOWA UTILITIES BOARD**
15 **DECISION?**

16 A. Our position is that we are entitled to such a credit dating back to January 25,
17 1999, when the Supreme Court effected the change of law in question. From that
18 point forward, the reciprocal compensation provisions in the parties'
19 interconnection agreements were at odds with reinstated FCC pricing rules. Issue
20 4 therefore should be answered in the affirmative.

21 **Q. WHAT ARE MCIIm AND MWC ASKING THE COMMISSION TO DO?**

22 A. MCIIm and MWC are requesting the Commission to do the following:

1 (1) Declare that MCIIm and MWC are entitled to be compensated at the sum
2 of the tandem interconnection rate and the end office interconnection rate for
3 calls terminated on their switches that serve a geographic area comparable to the
4 area served by BellSouth's tandem switches.

5 (2) Order BellSouth to provide MCIIm and MWC with credits equal to the
6 additional per minute amount of the tandem interconnection rate for the period
7 from January 25, 1999 to the earlier of (i) the date such amendments are approved
8 by the Commission, or (ii) the date the interconnection agreements are terminated.

9 (3) Order BellSouth to execute amendments to the MCIIm-BellSouth
10 interconnection agreement and the MWC-BellSouth interconnection agreement
11 that would incorporate the requirements of FCC Rule 51.711.

12 **Q. ASSUMING THE COMMISSION ORDERS CREDITS, HOW SHOULD**
13 **THE PARTIES GO ABOUT DETERMINING THE CORRECT AMOUNT?**

14 A. The precise amount can be determined by the parties through their normal billing
15 resolution processes. MCIIm and BellSouth followed this procedure, for example,
16 in the Florida DS1 combination proceeding.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.

1 BY MR. MELSON:

2 Q And, Mr. Argenbright, do you have six exhibits
3 attached to your direct testimony identified as MEA-1 to
4 MEA-6?

5 A Yes, I did.

6 MR. MELSON: Mr. Chairman, I'd ask that those be
7 identified as a composite exhibit.

8 CHAIRMAN DEASON: They will be identified as
9 Composite Exhibit 3.

10 (Exhibit 3 marked for identification.)

11 BY MR. MELSON:

12 Q Mr. Argenbright, did you also file 13 pages of
13 rebuttal testimony?

14 A Yes, I did.

15 Q Do you have any changes or corrections to that
16 testimony?

17 A No.

18 Q And if I were to ask you the same questions
19 today that are in that testimony, would your answers be
20 the same?

21 A They would.

22 Q And were two pages of that testimony redacted --
23 I believe it's Pages 12 and 13 -- that contain some
24 confidential information?

25 A That is correct, yes.

1 MR. MELSON: And, Commissioners, we have handed
2 out in a red envelope to each of you this morning, to the
3 court reporter, a copy of those two pages with the
4 confident material highlighted. What I would ask is that
5 the redacted version be inserted into the record as though
6 read.

7 CHAIRMAN DEASON: Without objection --

8 MR. EDENFIELD: No objection by BellSouth.

9 CHAIRMAN DEASON: -- it shall be so identified.

10 MR. MELSON: And I'd like to identify the two
11 confidential pages as an exhibit. I think that's going to
12 be the best way to keep the confidential material
13 separated.

14 CHAIRMAN DEASON: The two confidential pages
15 will be identified as Exhibit 4.

16 (Exhibit 4 marked for identification.)

17 BY MR. MELSON:

18 Q And, Mr. Argenbright, did you have three
19 exhibits attached to your rebuttal testimony identified as
20 MEA-7, 8, and 9?

21 A I did, yes.

22 MR. MELSON: Mr. Chairman, I ask that those be
23 identified as composite exhibit.

24 CHAIRMAN DEASON: Yes, Composite Exhibit 5.

25 (Exhibit 5 marked for identification.)

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **REBUTTAL TESTIMONY OF MARK ARGENBRIGHT**

3 **ON BEHALF OF**

4 **MCImetro ACCESS TRANSMISSION SERVICES, LLC**

5 **AND MCI WORLDCOM COMMUNICATIONS, INC.**

6 **DOCKET NO. 991755-TP**

7 **JULY 17, 2000**

8
9 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

10 A. My name is Mark E. Argenbright. My business address is Six Concourse
11 Parkway, Suite 3200, Atlanta, Georgia 30328.

12 **Q. ARE YOU THE SAME MARK ARGENBRIGHT WHO FILED PRE-
13 FILED DIRECT TESTIMONY IN THIS DOCKET ON JUNE 16, 2000?**

14 A. Yes.

15 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

16 A. The purpose of my Rebuttal Testimony is to address several statements made by
17 BellSouth witness Cynthia Cox in her Direct Testimony filed in this docket. I
18 will address these statements in the context of the four issues presented in this
19 case.

20
21 Issue 1: Under FCC Rule 51.711, would MCI and MWC be entitled to
22 be compensated at the sum of the tandem interconnection rate and the end
23 office interconnection rate for calls terminated on their switches if those

1 switches serve a geographic area comparable to the area served by
2 BellSouth's tandem switches?

3

4 **Q. AT PAGES 3 AND 4 OF HER DIRECT TESTIMONY, MS. COX**
5 **CONTENDS THAT FCC RULE 51.711 SUPPORTS BELLSOUTH'S**
6 **PROPOSED TWO-PRONGED TEST. DO YOU AGREE?**

7 **A.** No. Ms. Cox omits from her discussion of FCC Rule 51.711 any mention of Rule
8 51.711(a)(3) concerning geographic comparability. As I stated in my Direct
9 Testimony, this geographic comparability provision was adopted without
10 exception or qualification. Ms. Cox simply chooses to ignore this point.

11 **Q. AT PAGE 5 OF HER DIRECT TESTIMONY, MS. COX ASSERTS THAT**
12 **THE FCC'S LOCAL COMPETITION ORDER SETS FORTH A TWO-**
13 **PRONGED TEST. PLEASE COMMENT.**

14 **A.** For the reasons stated in my Direct Testimony at pages 10-13, it is clear that the
15 Local Competition Order did not create a two-pronged, tandem
16 functionality/geographic comparability test, but rather stated that an ALEC is
17 entitled to the tandem interconnection rate (in addition to the end office
18 interconnection rate) whenever the ALEC's switch serves an area comparable to
19 the area served by an ILEC tandem switch. This reading is confirmed by the FCC
20 Rule 51.711(a)(3), which contains no tandem functionality requirement.

21 **Q. MS. COX CONTENDS THAT PRIOR ORDERS OF THIS COMMISSION**
22 **SUPPORT BELLSOUTH'S POSITION. DO YOU AGREE?**

1 A. No. Ms. Cox refers to three of the Commission's arbitration orders: the Final
2 Order on Arbitration concerning Sprint and MCI, Order No. PSC-97-0294-FOF-
3 TP, Docket No. 961230-TP (March 14, 1997) ("MCI/Sprint Order"); the Order on
4 Petition for Arbitration concerning MFS and Sprint, Order No. PSC-96-1532-
5 FOF-TP, Docket No. 960838-TP (December 16, 1996) ("MFS/Sprint Order");
6 and the Final Order on Arbitration concerning ICG and BellSouth, Order No.
7 PSC-00-0128-FOF-TP, Docket No. 990691-TP (January 14, 2000)
8 ("ICG/BellSouth Order"). I note that although Ms. Cox uses slightly different
9 order and docket numbers at page 5 of her Direct Testimony than I do with
10 respect to the MCI/Sprint Order, it appears we are referring to the same Order.

11
12 **Q. AT PAGE 5 OF HER DIRECT TESTIMONY, MS. COX QUOTES THE**
13 **MCI-SPRINT ORDER FOR THE PROPOSITION THAT AN ALEC IS**
14 **NOT ENTITLED TO BE COMPENSATED FOR TRANSPORT AND**
15 **TANDEM FUNCTIONS THAT IT DOES NOT ACTUALLY PERFORM.**
16 **PLEASE COMMENT.**

17 A. The Commission's ruling in the MCI-Sprint Order was similar to its decision in
18 the MCI/BellSouth arbitration order. As I stated in my Direct Testimony, the
19 Commission noted in the MCI/BellSouth arbitration that the FCC rules forming
20 the basis for MCI's position on the symmetry issue were then stayed. Likewise,
21 in the MCI/Sprint Order, the Commission stated that it would not rely on the
22 stayed FCC rules and stayed portions of the Local Competition Order as a basis
23 for its decision. The Commission's decision in the MCI/Sprint Order therefore

1 does not apply here, because MCI and MWC in this docket are requesting the
2 Commission to make its decision based on the reinstated FCC pricing rules that
3 the Commission did not rely upon in its previous rulings.

4 **Q. AT PAGE 6 OF HER TESTIMONY, MS. COX CITES THE MFS-SPRINT**
5 **ORDER TO SUPPORT BELLSOUTH'S POSITION. IS THAT ORDER**
6 **GERMANE HERE?**

7 A. No. Like the MCI/Sprint Order, the MFS/Sprint Order was made when the FCC's
8 pricing rules were stayed. In the MCI/Sprint Order, the Commission stated that
9 "[w]hile we did discuss the merits of the FCC Rules and Order in our decision in
10 the MFS/Sprint arbitration, they were not a basis for our decision." (This
11 quotation is from page 6 of the MCI/Sprint Order as it appears on the
12 Commission's web site.) The Commission's ruling in the MFS/Sprint Order
13 therefore has no bearing here.

14 **Q. MS. COX ALSO POINTS TO THE MORE RECENT ICG/BELLSOUTH**
15 **ORDER TO SUPPORT BELLSOUTH'S PROPOSED TWO-PRONGED**
16 **TEST. DO YOU AGREE?**

17 A. No. Ms. Cox misreads the Commission's decision. The Commission noted that
18 ICG had no facilities in place and therefore concluded that the Commission could
19 not determine if ICG's network would serve a geographic area comparable to one
20 served by a BellSouth tandem switch. The Commission also considered whether
21 ICG's network would include tandem switches or provide a tandem functionality,
22 and concluded that it would not. The Commission did not suggest that ICG had to
23 prove both geographic comparability *and* tandem functionality. Rather, its

1 discussion was consistent with the principle that an ALEC seeking to recover the
2 tandem interconnection rate must prove geographic comparability *or* tandem
3 functionality. In short, the ICG Order supports the conclusion that an ALEC
4 showing only geographic comparability is entitled to the tandem interconnection
5 rate.

6 **Q. ARE YOU FAMILIAR WITH DECISIONS ON THE GEOGRAPHIC**
7 **COMPARABILITY ISSUE IN OTHER STATES?**

8 A. Yes. I am familiar with decisions in North Carolina, Ohio, Washington and
9 Illinois.

10 **Q. PLEASE DESCRIBE THE NORTH CAROLINA DECISION.**

11 A. In the ITC^DeltaCom/BellSouth arbitration, the North Carolina Utilities
12 Commission rejected BellSouth's argument that an ALEC must satisfy both a
13 functionality test and a geographic comparability test. The North Carolina
14 Commission arbitration panel concluded:

15 After careful and extensive review of the FCC's Rule 51.711 and
16 the attendant discussion in Paragraph 1090, the Commission
17 believes that the language in the FCC's Order clearly contemplates
18 that exact duplication of the ILEC's network architecture is not
19 necessary in order for the CLP [ALEC] to be eligible to receive
20 reciprocal compensation at the tandem switching rate. Further, we
21 believe that the language in the FCC's Order treats geographic
22 coverage as a proxy for equivalent functionality, and that the
23 concept of equivalent functionality is included within the

1 requirement that the equipment utilized by both parties covers the
2 same basic geographic area. We further believe that the Rule and
3 the Order language are not, for this reason, in conflict in the
4 manner described by BellSouth and the Public Staff.

5 Recommended Arbitration Order, Docket No. P-500, Sub 10 (April 20, 2000). A
6 copy of this Order printed from the North Carolina Commission's web site is
7 attached as Exhibit ___ (MEA-7). The quotation is from page 15 of that exhibit.
8 Although styled a "Recommended Arbitration Order," this order in fact
9 constitutes the arbitration panel's ruling in the case.

10 **Q. PLEASE EXPLAIN THE OHIO DECISION.**

11 **A.** In its January 1, 1997 Arbitration Award in the MCI/Ameritech case (Case No.
12 96-888-TP-ARB), the Public Utilities Commission of Ohio made clear that an
13 ALEC is entitled to the tandem interconnection rate based on a showing of
14 geographic comparability alone. The Commission stated:

15

16 How a non-incumbent LEC's switch functions is not the relevant
17 criteria to determine the compensation rate. The Commission's
18 guidelines specify that, where a switch of a non-incumbent LEC
19 serves a geographic area comparable to the area served by the
20 incumbent LEC's tandem switch, the appropriate rate for the non-
21 incumbent LEC is the incumbent LEC's tandem interconnection
22 rate.

1

2 An excerpt of this decision is attached as Exhibit ____ (MEA-8). The quotation is
3 from page 18 of the exhibit.

4 **Q. PLEASE DESCRIBE DECISIONS IN WASHINGTON.**

5 **A.** In the arbitration between Electric Lightwave, Inc. and GTE Northwest (Docket
6 No. 980370), the arbitrator rejected an argument similar to the one being made by
7 BellSouth here. In his March 22, 1999 decision, the arbitrator stated that “[t]he
8 functional similarity between a CLEC switch and an incumbent LEC’s tandem
9 switch is not relevant where the evidence supports a finding that they serve a
10 geographically comparable area.” A copy of the Electric Lightwave order is
11 attached as Exhibit ____ (MAE-9). The quotation is from page 15 of the exhibit.

12

13 BellSouth relies on Ninth Circuit decision in *US West Communications v. MFS*
14 *Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), which arose from a Washington
15 arbitration that preceded the Electric Lightwave case. The Ninth Circuit held
16 simply held that the Washington Commission was not arbitrary or capricious
17 when it ruled that MFS was entitled to the tandem interconnection rate, and in so
18 ruling considered whether MFS’s switch performed similar functions and served a
19 geographic area comparable to U.S. West’s tandem switch. The Ninth Circuit did
20 not hold that an ALEC must prove both tandem functionality and geographic
21 comparability. The Electric Lightwave arbitration decision demonstrates that
22 Washington does require such proof either.

23 **Q. PLEASE DESCRIBE THE ILLINOIS DECISION.**

1 A. Ms. Cox cites *MCI Telecommunications Corporation v. Illinois Bell Telephone*
2 *Company* (Case No. 97 C 2225, June 22, 1999) to support BellSouth's two-
3 pronged test. Ms. Cox's reliance is misplaced. The district court did not reach
4 the issue of whether a two-pronged test is consistent with FCC Rule 51.711 or the
5 Local Competition Order. In any event, the functionality point was essentially
6 moot, because there was no dispute that MCI's switches provided functionality
7 comparable to Ameritech's tandem switches.

8

9 Q. **CAN YOU ELABORATE FURTHER ON THE RELATIONSHIP**
10 **BETWEEN GEOGRAPHIC COMPARABILITY AND TANDEM**
11 **FUNCTIONALITY?**

12 A. Yes. The concept of a single, geographic scope test was adopted largely because
13 the FCC recognized that when an ALEC switch covers a geographic area that is
14 comparable to the area covered by an ILEC tandem switch, the ALEC switch is
15 necessarily providing similar functionality. Although a functionality test is not
16 required or appropriate when geographic comparability has been established, it is
17 useful to discuss how the MCI/MWC network operates to understand why
18 geographic coverage and functionality go hand in hand.

19

20 The Orlando and South Florida networks I described in my Direct Testimony
21 consist of some basic components: switches, fiber transport, local nodes,
22 collocations, and on-net buildings. The physical connectivity between the MCI
23 and MWC switches and the customers served by those switches is accomplished

1 in a variety of ways. First, a customer can be served via a facility, such as a DS1,
2 that extends from the switch directly to the customer. Typically this facility is
3 leased from BellSouth and is used to provide service to customers that are not
4 located in an on-net building or close to the MCI/MWC fiber transport system.

5
6 Alternatively, a customer could be served by extending a facility from a
7 collocation space to the customer. In this case the facility would be connected to
8 multiplexing equipment that would place that customer's traffic on a high
9 capacity transport system (e.g. OC-48 SONET system) to be transported to the
10 switch. This situation allows traffic from multiple customers to be combined onto
11 the higher capacity transport system.

12
13 Another situation is involved when a customer is located in an on-net building.
14 Here, MCI and MWC can place add/drop multiplexing equipment in the
15 building that is connected to the high capacity fiber ring. MCI and MWC then
16 use the building's inside wire and riser cable to connect the customer to the
17 multiplexing equipment that ultimately provides connectivity to the switch.

18
19 On the interconnection side of the switch, trunking facilities are installed between
20 the switch and BellSouth tandems as well as various BellSouth end offices. These
21 are typically at a DS1 level but can vary in capacity based on traffic needs. In
22 addition to local and intraLATA traffic, trunking arrangements are established for
23 such things as operator traffic, directory assistance, E911, and long distance
24 traffic. When traffic is originated on BellSouth's network, MCI and MWC pick

1 that traffic up at the point of interconnection between the two networks, bring that
2 traffic into their local switches and then route the traffic across the extensive fiber
3 transport network, digital cross connects and multiplexers (or, in some cases over
4 the direct trunk facilities between the switches and the customers) for delivery to
5 the customer. Essentially MCIIm and MWC switches serve as aggregation points
6 for traffic originated from BellSouth direct-trunked end offices and destined to
7 MCIIm's and MWC's customers.

8
9 Issue 2: Do MCIIm's and MWC's switches serve geographic areas
10 comparable to those served by BST tandem switches?

11
12 **Q. AT PAGE 9 OF HER TESTIMONY, MS. COX STATES THAT MCIIm**
13 **AND MWC HAVE NOT OFFERED PROOF THAT THEY CURRENTLY**
14 **SERVE AREAS COMPARABLE TO THE AREAS SERVED BY**
15 **BELLSOUTH TANDEMS. PLEASE RESPOND.**

16 **A.** At pages 14-16 of my Direct Testimony, I provided information about the MCIIm
17 network in the Orlando area and the MCIIm/MWC network in the South Florida
18 area. In addition, I attached maps showing the geographic areas covered by
19 MCIIm's and MWC's switches. As I stated in my Direct Testimony, these areas
20 are comparable to the areas served by BellSouth's tandems. MCIIm and MWC
21 have served discovery requests on BellSouth requesting, among other things,
22 maps showing the geographic coverage of its tandems so that a ready comparison
23 can be made at the hearing in this docket.

1 **Q. PLEASE PROVIDE ADDITIONAL INFORMATION, WITH RESPECT**
2 **TO THE ORLANDO AREA, REGARDING THE SERVICE MCIIm**
3 **PROVIDES TODAY.**

4 A. In the Orlando market, MCIIm has a network configured and equipped to serve
5 fourteen rate centers, and MCIIm currently has customers in nine of these rate
6 centers. MCIIm's Orlando switch has a current equipped capacity of
7 approximately [REDACTED] DS0s, and currently provides customers with more than
8 [REDACTED] local circuits. Through its fiber network, the Orlando switch serves [REDACTED]
9 [REDACTED] on-net buildings in [REDACTED] cities. In addition, MCI has established [REDACTED]
10 collocation arrangements in [REDACTED] BellSouth and Sprint wire centers. These
11 collocation arrangements are connected to the switch via SONET transport
12 systems that ride our fiber facilities. Additional SONET transport systems
13 provide internodal transport between and among the local nodes and the switch.

14 **Q. PLEASE PROVIDE ADDITIONAL INFORMATION, WITH RESPECT**
15 **TO THE SOUTH FLORIDA AREA, REGARDING THE SERVICE MCIIm**
16 **PROVIDES TODAY.**

17 A. In the South Florida area, the MCIIm/MWC network has had three switches and
18 has been configured and equipped to serve twelve rate centers. (Since I filed my
19 Direct Testimony, we have added a fourth switch in the South Florida area. The
20 information I describe below does not include the capacity of this new switch.)
21 Combined, the current total equipped capacity of these switches is approximately
22 [REDACTED] DS0s. MCIIm and MWC currently have customers in eleven of these rate
23 centers. MCIIm and MWC provide these customers with more than [REDACTED] local

1 circuits. Through the fiber network these switches serve [REDACTED] on-net
2 buildings in [REDACTED] cities. [REDACTED] collocation arrangements have been established in
3 [REDACTED] BellSouth wire centers. As in Orlando, these collocation arrangements are
4 connected to the appropriate switches via SONET transport systems that ride our
5 fiber facilities, and additional SONET transport systems provide internodal
6 transport between and among the local nodes and the switch.

7
8 Issue 3: Should BellSouth be required, pursuant to Part A Section 2.2 or
9 2.4 of the interconnection agreement, to execute amendments to its
10 interconnection agreements with MCIIm and MWC requiring BellSouth to
11 compensate MCIIm and MWC at the sum of the tandem interconnection
12 rate and the end office interconnection rate for calls terminated on their
13 switches that serve a geographic area comparable to the area served by
14 BellSouth's tandem switches?

15
16 **Q. DOES MS. COX CHALLENGE MCIIm'S AND MWC'S**
17 **UNDERSTANDING OF PART A SECTION 2.2 AND 2.4?**

18 **A.** No. Ms. Cox simply restates BellSouth's position that the parties'
19 Interconnection Agreements are consistent with FCC Rule 51.711 and Orders of
20 this Commission. For the reasons I stated in my Direct Testimony, the
21 Interconnection Agreements should be amended as MCIIm and MWC are
22 requesting in this docket.

23

1 Issue 4: Are MCIIm and MWC entitled to a credit from BellSouth equal to
2 the additional per minute amount of the tandem interconnection rate from
3 January 25, 1999 to the earlier of (i) the date such amendments are
4 approved by the Commission, or (ii) the date the interconnection
5 agreements are terminated?

6
7 **Q. MS. COX STATES THAT IF THE COMMISSION AWARDS A REFUND**
8 **IN THIS CASE, THE RETROACTIVE DATE SHOULD NOT BE**
9 **JANUARY 25, 1999. PLEASE RESPOND.**

10 **A.** As I noted in my Direct Testimony, I am not a lawyer. MCIIm's and MWC's
11 position is that the credit should date back to January 25, 1999, the date of the
12 applicable Supreme Court decision. Otherwise, BellSouth would be allowed to
13 retain funds that it collected in violation of the Supreme Court's decision. MCIIm
14 and MWC will address the legal issues further in their post-hearing briefs.

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

16 **A.** Yes, it does.

1 BY MR. MELSON:

2 Q Mr. Argenbright, could you summarize your
3 testimony for the Commission, please.

4 A Yes. Good morning, Commissioners. My direct
5 and rebuttal testimony address three main points after
6 this morning. First, I discuss why the language and
7 policy of the FCC's rule on reciprocal compensation
8 clearly entitles WorldCom to receive compensation at the
9 tandem level, the tandem interconnection rate for the
10 termination of BellSouth traffic wherever WorldCom's local
11 switch is served, the geographic area that is comparable
12 to the area served by the BellSouth local tandems.

13 Second, I describe the geographic areas served
14 by WorldCom's local switches and show that the those areas
15 are comparable to the areas served by BellSouth's local
16 tandems. And finally, I discuss why the changes in law
17 provisions in WorldCom's agreements were triggered by the
18 Supreme Court's reinstatement of the FCC's rule on
19 reciprocal compensation and why the Commission should
20 require BellSouth to execute an amendment implementing
21 that change in law.

22 And for the rest of my summary, I'd like to
23 focus on just two items. The first being the policy
24 underlying the FCC's rule and the geographic coverage of
25 WorldCom's local switches. The whole thrust of the FCC

1 rule was to provide symmetrical compensation. In other
2 words, the rates are set based on the ILEC's costs and the
3 ALEC in this instance is entitled to receive the same rate
4 for providing the same service.

5 What does it mean to provide the same service?
6 An ALEC that has a network providing transport and
7 termination services to a geographic area comparable to
8 the area served by the ILEC tandem network is providing
9 the same service. Under both the order and rule, an ALEC
10 is automatically entitled to receive the tandem
11 interconnection rate whenever there is geographic
12 comparability. Alternatively, it means that in the event
13 the ALEC's geographic service area is smaller than that
14 served by the ILEC's tandem switch, the ALEC could qualify
15 to receive the tandem interconnection rate if this
16 Commission were to find that the ALEC's network performs
17 the call aggregation and distribution functions similar to
18 those performed by the ILEC's tandem network.

19 Why is it good policy to apply a tandem rate to
20 an ALEC's network based on comparable geographic coverage,
21 even though its switch may not operate in the same fashion
22 as that of the ILEC? It's good policy because it sends a
23 proper pricing signal to the market and recognizes
24 efficiency and associated financial and operational
25 investment in the ALEC's network. When BellSouth delivers

1 a call to an ALEC's network which provides transport and
2 termination services over a comparable geographic area as
3 that of the BellSouth tandem, BellSouth is essentially
4 substituting the ALEC's network for its own tandem
5 network.

6 If BellSouth is allowed to compensate the ALEC
7 at a rate less than the tandem cost that BellSouth is
8 avoiding in delivering that traffic to the ALEC, BellSouth
9 will have no incentive to improve the efficiency of its
10 own network. In fact, the ALEC will be penalized for
11 being more efficient than BellSouth, and BellSouth will be
12 rewarded for being the least efficient of the carriers.

13 As discussed in my direct testimony such policy
14 consideration was completely consistent with the FCC's
15 discussion of symmetrical rates and interest in
16 establishing and maintaining a competitive framework for
17 local services in Florida. And finally, with regard to
18 the geographic question, I have some -- I'll try and speak
19 loudly. I've got some -- a demonstration here of the
20 local coverage areas between BellSouth local tandems and
21 the WorldCom local network. And first, we're looking at
22 the --

23 CHAIRMAN DEASON: Excuse me. Mr. Argenbright,
24 could you turn on that microphone and tilt it toward you?

25 A Very good. Thank you. The exhibit here

1 provides a look at the South Florida market made up of
2 Fort Lauderdale and Miami areas. It identifies the rate
3 centers served by the BellSouth local tandems. The
4 tandems are identified here. I believe this is pretty
5 much consistent with the recent -- the resubmission of
6 Cynthia's exhibits with the exception of perhaps the
7 North Dade, which I show being served by these local
8 tandems.

9 Now, I've got an overlay. If I can get a little
10 help. Again, towards geographic scope, this overlay in
11 the red shows the rate centers served by the WorldCom
12 local network. And as you can see, we have certainly a
13 comparable service area. We do have -- with the WorldCom
14 local switches, we do cover a couple more, actually three,
15 additional rate centers above the Fort Lauderdale/Pompano
16 Beach area. And again, we believe this demonstrates that
17 WorldCom's network serves a comparable geographic area in
18 this market. And then we can do the same thing with
19 regard to the Orlando market, again, identifying the
20 BellSouth served rate centers in green. Actually, the EO
21 is end office, and the number of end offices within each
22 of those rate centers. And again, the overlay
23 demonstrates, again, the rate centers served by WorldCom
24 with its local network and its switch in Orlando. Again,
25 we have the BellSouth tandems identified as well. And you

1 can see that we serve several more rate centers than the
2 BellSouth network does in this instance because this
3 includes some of the rate centers that are in Sprint
4 territory that we use the same switch to provide local
5 service. So, hopefully, that presents a picture with
6 regard to the geographic scope question. And we think we
7 meet that test. And with that, I conclude my summary.

8 Q Mr. Argenbright, have you caused some small
9 scale copies of these larger exhibits to be created in
10 which the BellSouth -- the area served by the BellSouth
11 local tandems is shown in green and the area served by the
12 MCI WorldCom switches is shown in red cross-hatching?

13 A Yes, that is correct.

14 MR. MELSON: Chairman Deason, I would like to
15 ask that the two smaller versions of the handout be
16 identified as Exhibit 6.

17 CHAIRMAN DEASON: They will so be identified.

18 (Exhibit 6 marked for identification.)

19 MR. MELSON: And Mr. Argenbright is available
20 for cross-examination.

21 CHAIRMAN DEASON: Mr. Edenfield.

22 MR. EDENFIELD: Thank you. Let me write this
23 down before I forget. My memory is basically shot.

24 CROSS EXAMINATION

25 BY MR. EDENFIELD:

1 Q Good morning, Mr. Argenbright.

2 A Good morning.

3 Q As I understand the nature of our disagreement
4 here, it stems around Provision 2.4 of the interconnection
5 agreement?

6 A Yes, that is one of the contractual provisions.
7 Yes.

8 Q Specifically 2.4.2?

9 A Bear with me while I get 2.

10 Q Sure.

11 A I'm sorry, I have 2.4. I don't have 2.4.2 in
12 front of me.

13 Q I don't mean to get you caught up with all of
14 that. Basically what we're talking about here is a
15 provision that says in the event some law is entered by
16 the Court or the FCC or the State that renders a provision
17 in the interconnection agreement unlawful, that we will
18 then come back and try to work that out. Is that
19 basically where we are?

20 A Generally, yes. From a layman's perspective,
21 yes.

22 Q Okay. And your position in this case is that
23 Rule 51.711 of the FCC that was reinstated back in June of
24 1999 by the Eighth Circuit renders certain provisions of
25 this interconnection agreement unlawful?

1 A That is correct.

2 Q Which provision do you contend is rendered
3 unlawful?

4 A To the extent the agreement as it exists today
5 at -- and I'm sorry, I can't give you the specific cite
6 within the agreement -- that prohibits WorldCom from
7 receiving tandem level reciprocal compensation, we believe
8 that is in conflict with the reinstated section of the
9 FCC's rules.

10 Q Okay. I had misquoted a while ago. I think
11 that particular section is an Attachment 4, Section 2.4.2.

12 A Right.

13 Q And if you look there, or you can find it in
14 your complaint on Page 5.

15 A I apologize. I'm there.

16 Q That's okay.

17 MR. EDENFIELD: I have copies of the complaint
18 if the Commission doesn't have -- cannot see the 2.4.2, if
19 you would like it, I can pass that out.

20 CHAIRMAN DEASON: If you have extra copies, that
21 would be appreciated.

22 COMMISSIONER JACOBS: This is not what's in your
23 testimony on Page 4?

24 THE WITNESS: Yes, beginning on Page 4 of my
25 direct.

1 MR. EDENFIELD: And what we're handing out is a
2 copy of the complaint, and the specific reference I'm
3 making is on Page 5 of the complaint.

4 BY MR. EDENFIELD:

5 Q And the question I have for you,
6 Mr. Argenbright, is, is 2.4.2 the only provision in the
7 interconnection agreement that WorldCom contends was made
8 unlawful by the reinstatement of 51.711?

9 A I'm just trying to make sure --

10 Q I focussed around --

11 A Yeah, I would agree that that's true. Yes.

12 Q Okay. What is it about 2.4.2 that has been
13 rendered unlawful, in your opinion, by the reinstatement
14 of the rule?

15 A The indication -- I guess it's the last sentence
16 appearing on Page 5 of my direct testimony that BellSouth
17 shall not compensate MCI for transport and tandem
18 switching unless MCI actually performs each function.

19 Q Why has that provision been rendered unlawful?

20 A Well, I hesitate to try and take Mr. Melson's
21 place in discussion this morning.

22 Q Mr. Melson loved that he got to say what he
23 wanted to, just like I did.

24 A But the way the contract exists today restricts,
25 we believe -- the 51.711 today would allow, as we

1 indicated earlier, that there is a two-prong test that is
2 an either/or basis. You either have actually the
3 function, which is discussed here, or you have geographic
4 scope. This section does not address the alternative
5 geographic scope.

6 Q Okay. So you would agree then that this
7 sentence, it says, BellSouth shall not compensate MCImetro
8 for transport and tandem switching unless you actually
9 performed the function, I'm sorry, I paraphrased it a
10 little bit, but that particular sentence as it exists
11 precludes you from recovering tandem switching because you
12 do not perform transport and tandem switching functions as
13 defined in the agreement?

14 A To the extent those functions are defined as
15 trunk-to-trunk connectivity, yes.

16 Q Well, if they were not defined as trunk-to-trunk
17 connectivity, why would you need the Commission to declare
18 them illegal?

19 A I'm sorry, I lost track there.

20 Q I guess what I'm getting at here is, if you feel
21 like you're performing the tandem switching function, why
22 would you just not come in and say, I'm here to show you
23 that I'm performing the functions, instead of coming here
24 and saying, you need to declare it illegal? Or unlawful,
25 I guess, is the better term.

1 A Yeah, the fact that this language -- I mean, I
2 believe the reference is back in the arbitration. The
3 fact that this language was adopted with a specific
4 reference to the fact that 51.711 where we believe our
5 authority exists was adopted, this language was adopted
6 outside of viewing that because it was inappropriately so
7 because it was stayed is why we're here.

8 Q Okay. Maybe I'm losing it in my question here
9 somewhere. What I'm trying to get at is, does WorldCom
10 contend that under the terms of this agreement that it is
11 providing tandem switching in such a manner as to be
12 entitled to compensation for it?

13 A Under the terms of the agreement, no.

14 Q Okay. And what is it about those terms that's
15 making you not provide tandem switching in such a way as
16 to be compensated for it?

17 A It goes to the definition of tandem
18 functionality.

19 Q Okay. And that goes back to 1996, from the
20 original arbitration?

21 A I believe that is correct, yes.

22 Q All right. Let's talk about WorldCom's network
23 from then versus now. How many switches did WorldCom have
24 back in '96?

25 A I believe in the MCI -- that was MCI; that was

1 two switches, I believe, at that point.

2 Q And where were they located?

3 A I believe one in Miami and one in Orlando.

4 Q Okay. Subsequent to that, you have now added a
5 third and fourth switch, as I understand it?

6 A Actually, there would be four additional
7 switches; one of those has just very recently turned up.

8 Q I'm trying to figure out where the fourth
9 additional one -- my understanding is, you had one in
10 Orlando; you've still got that same switch in Orlando.

11 A There is still a single Orlando switch, yes.

12 Q Okay. And that's the same one that existed back
13 then?

14 A Yes. I'm sorry, my count was off. You were
15 correct.

16 Q Okay. Has the geographic scope of what you were
17 serving back in 1996 changed from that switch?

18 A I have not talked to the engineering group
19 specifically to that question as to a before and after
20 picture. You know, this is certainly the service area
21 today.

22 Q So we don't know, as we sit here now, whether
23 the red shaded area is the same coverage area that existed
24 back in '96?

25 A I do not know.

1 Q Okay. Now, you had a switch in Miami, as I
2 understood it, back in '96?

3 A I believe so, yes.

4 Q And you have added a second switch in Miami and
5 one in Pompano Beach, I guess, which is just north of
6 Fort Lauderdale?

7 A Right.

8 Q Any other switches that we added in BellSouth
9 territory?

10 A No. And those were added essentially through
11 the acquisition of -- I mean, you've got a combination of
12 the former MCI metro network and the former MFS network.
13 It was not -- the switches were not placed, you know, as
14 network engineering decisions. They were inherited, if
15 you will.

16 Q Did you get one of those from MFS, maybe, or --
17 I'm trying to figure out how you got the other switches.

18 A Yes.

19 Q Both of the new ones from MFS or just one?

20 A Actually, both of the new.

21 Q Okay. And when did you acquire MFS?

22 A That was in -- I cannot give you the specific
23 date; there have been too many.

24 Q How about a year? Do you know what year that
25 was in?

1 A I believe '97.

2 Q I won't hold you to it.

3 A Okay. Thank you.

4 Q But would that be a pretty decent approximation,
5 would be 1997?

6 A In terms of when the transaction actually
7 closed.

8 Q Has the functionality provided by those switches
9 changed since you acquired MFS? And by those switches, I
10 mean all four of them.

11 A I would say, yes, because of the network
12 expansions that have gone on over time.

13 Q Are any of those switches now performing tandem
14 switching functions -- and by that I mean trunk-to-trunk
15 switching -- when they were not doing it before?

16 A They are not performing trunk-to-trunk
17 connections as they were doing it before, but they are
18 doing -- again, based on the difference in network
19 architecture, they are doing similar functionalities in
20 the form of aggregation, co-aggregation, and distribution.

21 Q Would you agree that if the Commission stays
22 with its trunk-to-trunk definition of a tandem switch,
23 that none of the four switches that you have qualify as a
24 tandem switch?

25 A Yes. If the functionality that these switches

1 employ today, which is the aggravation and distribution
2 via fiber networks, et cetera, is not considered tandem
3 functionality and the only test is trunk-to-trunk
4 connectivity, yes, that's true.

5 Q And all of the customers that WorldCom has are
6 connected to the line side of that switch?

7 A Yes, that is true.

8 Q Okay. Originally when the Commission ordered
9 the language that you see in Section 2.4.2 of Attachment
10 4, when the Commission ordered that language to go into
11 the interconnection agreement, did MCI at the time or
12 WorldCom appeal that decision?

13 A I don't believe so.

14 Q The older decisions, and by those I'm talking
15 about the MFS/Sprint arbitration and the MCI/Sprint
16 arbitration that were back in '96 and '97, will you agree
17 with me that the decision the Commission made back then
18 was based in large part on Section 252(d)(2)(A) of the Act
19 and on Paragraph 1090 of the FCC's First Report and Order?

20 A I don't believe so. I believe those were
21 decided -- because those were in the time period when the
22 rule was stayed as well.

23 Q Let me give you a copy of the MFS decision. If
24 you look at the bottom left-hand corner of what I just
25 passed out, which is a copy of the petition by

1 Metropolitan Fiber Systems of Florida for arbitration
2 against Sprint, to paraphrase; that's Docket Number
3 960838-TP, Order Number PSC-96-1532-FOF-TP issued
4 December 16, '96. In the bottom left-hand corner, you see
5 it will say 3 of 9 or a number of 9. Go to 3 of 9. It
6 should be Page 3 of that order.

7 A Yes.

8 Q Look at the very last paragraph that starts on
9 that page. Will you agree with me that this is the
10 Commission discussing reciprocal compensation and the
11 entitlement to the tandem switching rate, that this
12 section is talking about that?

13 A Yes, I would agree. We're talking about the
14 discussion of 252(d)(2)(A)(i)?

15 Q Okay. Will you agree with me that the
16 Commission considered that particular section of the Act
17 in rendering its decision in this case? This case being
18 the MFS case.

19 A I would agree, yes. Also, that the December
20 decision time frame is after the FCC rules were stayed as
21 well.

22 Q You're not suggesting that 252(d)(2)(A) of the
23 Act was in any way stayed, are you?

24 A No, I am not.

25 Q I think we can agree that at the time this

1 decision came out, the Rule 51.711 had been stayed. What
2 I'm trying to figure out is, since that was not considered
3 as part of this order, what the Commission did base its
4 decision on.

5 Now, turn over to Page 4 of 9, and go down to
6 the second full paragraph that says, "The FCC's order
7 provides." Just read that very quickly, and if you would,
8 confirm for me that that is actually quoting from the
9 First Report and Order at Paragraph 1090.

10 A Yeah, without side by side, it does look to be
11 the same paragraph.

12 Q Okay. Would you agree with me then that at
13 least in part, the Commission's decision here was based on
14 Paragraph 1090 of the FCC's First Report and Order?

15 A I would agree that it was considered.

16 Q And the ultimate conclusion, which is in the
17 last paragraph there before Roman Numeral II, the last
18 sentence, is that MFS could not charge Sprint for
19 transport, which by that definition included tandem
20 switching, because MFS does not actually perform the
21 function. Would you agree with that?

22 A I would agree, yes.

23 Q Hopefully, I won't have to take you through the
24 MCI order, but would you agree with me that substantially
25 the same analysis was used by the Commission in the

1 MCI/Sprint arbitration in that order that came out in
2 early 1997, March 14th to be exact?

3 A Yes, bear with me just a moment.

4 Q Certainly.

5 MR. EDENFIELD: And for the record, I'm
6 referencing Docket Number 961230-TP, Order Number
7 PSC-97-0294-FOF-TP issued March 14th, 1997.

8 A Here, in this order I would note that there is a
9 specific reference that in this docket, the Commission did
10 not rely on the stayed portions of the FCC rules.

11 Q Certainly, and I would agree with that. And
12 what I'm trying to get at is what they did rely on since
13 they didn't rely on that since that was stayed.

14 A Okay.

15 Q And, again, that would be Section 252(d)(2)(A)
16 and Paragraph 1090 of the First Report and Order. Would
17 you agree with that?

18 A I would agree.

19 Q When the United States Supreme Court reinstated,
20 or actually, ordered Rule 51.711 to be reinstated, did
21 they in any way indicate that Paragraph 1090 of the
22 First Report and Order had been affected by that
23 reinstatement?

24 A No, I'm not aware that they specifically
25 referenced Paragraph 1090.

1 Q And I have the same question for
2 Section 252(d)(2)(A) of the Act. Was there anything in
3 the United States Supreme Court's order that indicated
4 that the reinstatement of 51.711 affected that particular
5 provision of the Act?

6 A No. I believe that was limited to the FCC's
7 order.

8 Q And I take it then you are not suggesting in
9 this proceeding that the reinstatement of Rule 51.711 in
10 any way supersedes or overrides or negates Paragraph 1090
11 of the First Report and Order or Section 252(d)(2)(A) of
12 the Act?

13 A I believe that paragraph, the ordering paragraph
14 being reinstated simply has a -- I mean, Paragraph
15 1090 has language that does not appear in the order
16 ordering Paragraph 51.711, and I would say that the
17 reinstatement of that section while not changing Paragraph
18 1090 is cause for review of that interpretation.

19 Q Now, you would interpret 1090 as having three
20 separate distinct requirements, if I understand your
21 testimony? In other words, it's not an A plus B plus C,
22 it's an A or B or C?

23 A That is correct.

24 Q Can you cite to any authority from a United
25 States District Court or United States Court of Appeals

1 that has agreed with your interpretation?

2 A Give me just a moment. I'm -- no. I'm going to
3 have to say I cannot cite a court decision that will
4 support a specific interpretation of 1090 that says it is
5 either/or. I believe, as I think was pointed out earlier
6 today, there are a variety of takes on this paragraph.
7 And even as I look at the Ninth Circuit decision out of
8 Washington, it does not appear to me to be weighing
9 heavily on a two-prong test any more than the either/or
10 interpretation.

11 Q You would agree with me that the underlying case
12 from the Ninth Circuit decision that the Washington
13 Commission had adopted a two-prong test, and in fact, they
14 looked at functionality and geographic scope?

15 A I would agree that they looked at both of those,
16 and MFS satisfied both of those. And the Ninth Circuit on
17 the, as you said earlier, arbitrary and capricious
18 standard did not see anything wrong with that.

19 Q And nor did they see anything wrong with the
20 adoption of the dual standard?

21 A I'm sorry, I don't see them adopting the dual
22 standard.

23 Q No, I didn't indicate the Ninth Circuit had
24 adopted it, that the Ninth Circuit did not find anything
25 wrong with the Washington Utilities Commission adopting

1 it.

2 A Yeah, I am not -- I would not agree that they --
3 they, the Washington Utilities and Transportation
4 Commission -- adopted the dual standard. I believe they
5 looked at both of those considerations and reached a
6 decision.

7 Q Will you agree with me -- I hate to keep pulling
8 cases out, and I don't know if you have --

9 A I hate it to.

10 Q Do you have the Ninth Circuit opinion there with
11 you?

12 A I do.

13 MR. EDENFIELD: I don't know if the Commission
14 has a copy. I have had enough citing cases, but if you
15 don't have a copy --

16 Q Take a look, if you would -- I'll have you look
17 in the upper right-hand corner. Right above the term
18 "Lexis," you will see a Page 10. I'm not sure if your
19 copy is set up the same way.

20 A I've got it.

21 Q Look down in the left-hand column. I'm not sure
22 if everybody's copy has the little squiggly marks on it or
23 not, but if you look at the last paragraph on the
24 left-hand column right in the middle, will you agree with
25 me that the Ninth Circuit ruled that the Commission

1 properly considered whether MFS's switch performed similar
2 functions and serves a geographic area comparable to
3 US West's tandem switch, and then cites Paragraph 1090 for
4 authority for that?

5 A Yeah, I would agree that they recognized that
6 the Washington Commission looked at both of those issues
7 and reached a decision.

8 Q All right. You're not suggesting that the
9 Florida Commission is the only Commission in the country
10 to, at least in my view, adopt a dual test, a two-prong
11 test?

12 A No, I would not say that this is unique.

13 Q In fact, you'll acknowledge that states such as
14 California and I can go through the litany of them, but
15 that other states have adopted a standard or a policy that
16 says you must demonstrate both geographic scope and
17 functionality to be able to recover the tandem switching
18 rate?

19 A I would agree just as well that we can talk
20 about North Carolina and Ohio and a variety of other
21 states that have done it differently. Again, I will admit
22 that there are a variety of approaches.

23 CHAIRMAN DEASON: Mr. Edenfield, are you leaving
24 the Ninth Circuit decision -- the Ninth Circuit decision,
25 are you leaving that for -- I need to ask a question or

1 two about that.

2 MR. EDENFIELD: Yes, sir. Sure, go ahead.

3 CHAIRMAN DEASON: Okay. Just below the language
4 which Mr. Edenfield referred you to, and this is on Page
5 10, there's a sentence that reads, "The Commission" -- and
6 I assume they're referring to the Washington Commission --
7 "The Commission found that MFS's switch 'is comparable in
8 geographic scope' to US West's tandem switch, and
9 'performs the function of aggregating traffic from
10 widespread remote locations' as a tandem switch does."

11 Does that mean that the Washington Commission,
12 even though it may not actually have performed a tandem
13 function, that the end result was that it performed -- it
14 completed the call from widespread remote locations which,
15 in effect, is the equivalency of what a tandem switch
16 does?

17 THE WITNESS: That is correct. The MFS in this
18 case had a single switch. It was not performing
19 trunk-to-trunk connectivity.

20 CHAIRMAN DEASON: Now, did the Ninth Circuit
21 address that in any way? Did they uphold that or reject
22 that or did not address it?

23 THE WITNESS: I believe -- and again, I'm well
24 out of any attorney area that I should be in probably, but
25 there is a footnote, I believe, that indicates they

1 reviewed the decision under the arbitrary and capricious
2 standard, and whether -- and I'm reading, I guess, the
3 footnote right under that -- "Whether MFS's switch is a
4 tandem switch is not a determination of compliance with
5 the requirements of the Act" --

6 CHAIRMAN DEASON: So they didn't reach that
7 question. They were just applying the arbitrary and
8 capricious standard?

9 THE WITNESS: That is my, again, layman
10 understanding. It's -- the Washington Commission chose
11 that definition of functionality.

12 CHAIRMAN DEASON: Well, then let's go back to
13 Florida and the situation here based upon the facts. Is
14 it your position that the functionality performed by your
15 switches in Florida, that it does the same as what was
16 found in Washington; that is, that it aggregates traffic
17 from widespread remote locations and basically serves the
18 same function as a tandem switch would perform?

19 A Yes, that's correct. I mean, that's the only
20 way it would -- it would seem the tension we've got here
21 is the difference in the two companies' networks, and it's
22 apples and oranges. Our network is based on a single or
23 limited switches and fiber transport systems. The Bell
24 network is based on -- and the networks are as they are
25 because the companies were faced with different

1 technologies and different economics of building a network
2 at the time the networks were built.

3 CHAIRMAN DEASON: Okay. Let me interrupt you
4 just a second.

5 THE WITNESS: Sure.

6 CHAIRMAN DEASON: You mentioned something I
7 wanted to talk to you about. Referring back to the
8 Florida Commission order dated December 16, 1996, on Page
9 4, there's a paragraph, and I'll give you a moment to find
10 that.

11 THE WITNESS: I'm sorry, that was Page 4?

12 CHAIRMAN DEASON: Yes, 4 of 9.

13 THE WITNESS: Okay.

14 CHAIRMAN DEASON: It would be the second full
15 paragraph. If you'll take just a moment and read that,
16 there's a mention of technology and whether there can be a
17 different technology applied.

18 THE WITNESS: Yes.

19 CHAIRMAN DEASON: I think the Commission
20 concluded that -- and at the bottom of that paragraph it
21 reads, "In this case, the record indicates that the
22 technology used by MFS is no different than the technology
23 used by Sprint. The only difference is the size of the
24 companies' operations, not the technologies used to
25 provide transport." Is it your testimony that that was an

1 incorrect finding, that MFS -- well, let me back up. Not
2 that this was an incorrect finding, but is it your
3 testimony that based upon the facts that exist now that
4 WorldCom switches are based upon a different technology
5 and may meet this provision within the FCC order?

6 THE WITNESS: Yes. The existing network, as
7 I've depicted with the geographic scope, does have --
8 albeit the single or few switches does employ technology
9 that extends the reach of those switches to provide that
10 call aggregation and distribution function that was talked
11 about in the Washington order.

12 CHAIRMAN DEASON: So it's your position that
13 under the FCC's order as long as the function is provided,
14 even though it may not actually be through a tandem
15 switch, but as long as the function is the same, that
16 meets the standard?

17 THE WITNESS: Again, we believe the geographic
18 test is enough, but when you look at functionality, yes,
19 we would agree that a view of functionality that is
20 limited to just trunk-to-trunk connectivity does not
21 address the FCC's rule that says, you know, look at
22 comparable technologies.

23 COMMISSIONER JABER: It doesn't even say, at
24 least according to your testimony, that the function has
25 to be the same; correct? It says that the function has to

1 be similar?

2 THE WITNESS: Yes, I agree.

3 CHAIRMAN DEASON: All right. And it's your
4 position that the true test, which is the geographic
5 scope, that it has to be comparable as to the incumbents;
6 is that correct?

7 THE WITNESS: Yes. And it does go hand in hand
8 with functionality because for the competitive, the ALEC,
9 to provide service over a geographic scope like this,
10 there has to be a level of functionality that allows -- I
11 mean, certainly what we're saying here is that BellSouth's
12 network for this area deploys tandems and subtending end
13 offices. Our network in serving the same area or similar
14 area does not deploy that architecture. It deploys a
15 switch and fiber which, you know, mimics that
16 functionality of collecting traffic and distributing it
17 through the service area.

18 CHAIRMAN DEASON: Okay.

19 BY MR. EDENFIELD:

20 Q Mr. Argenbright, what is it your switches were
21 not doing then that they are doing now?

22 A I can't address the specifics of the network at
23 that -- back in '96. I would not be able to address that.

24 Q So you can't make a comparison of then versus
25 now as far as whether those switches are doing anything

1 different today than they were back then?

2 A I can make assumptions due to the growth.

3 Q I wish you would not guess, but if you know,
4 tell me the answer; if you don't, tell me you don't know.

5 A I cannot specifically say.

6 Q What is the function of a tandem? What is it
7 supposed to do?

8 A Tandem in your definition or mine?

9 Q Standard industry definition of what a tandem
10 switch is supposed to do.

11 A Take a Newton's Telecom dictionary definition, a
12 tandem switch, you know, is as it literally is, an
13 intermediate switch among other switches.

14 Q So, in other words, when WorldCom, for example,
15 will originate a call to a BellSouth customer, BellSouth
16 will have to switch that call twice to get it to its
17 customer, generally?

18 A To the extent -- yeah, that is true.

19 Q So BellSouth is performing that extra what they
20 calling tandem switching function, the second switching to
21 get the call completed for your customer?

22 A In BellSouth's network, that is true.

23 Q Now, when the BellSouth customer turns around
24 and we originate a call to a WorldCom customer, you're
25 switching that traffic once; correct?

1 A It is going through a classified circuit switch
2 once, and then out into a fiber transport network with
3 DACs and multiplexers and --

4 Q So, in other words, your switch, the one switch
5 you have in Orlando, when you're terminating a call
6 originated by a BellSouth customer, the call goes through
7 the switch one time, and then from that switch, it goes to
8 the customer? I mean, basically that's what happens;
9 right?

10 A Well, it really is not that simple. Let's take
11 an example of, you know, a building with a customer, a
12 WorldCom customer which we happen to have fiber -- a lit
13 building is how we refer to that, and a BellSouth customer
14 calls the WorldCom customer located in that building.
15 That call is going to come through the BellSouth network
16 and, you know, say we're -- at the tandem is the point of
17 interconnection mid span fiber meet, it get's -- you know,
18 that call is put on an OC48 system. It is delivered to
19 the local node where the other end of that SONET system
20 is. That particular call is taken out of that transport
21 system into the Class 5 switch.

22 The switch decides where it needs to go, the
23 on-net building. It will go back out of the switch, back
24 onto the SONET transport system going to that building
25 where it will then come off the high capacity SONET system

1 into the building and be brought out to, you know, the
2 facilities within that building to deliver it to the
3 customer.

4 Q And after it's all said and done, you've
5 switched it one time?

6 A With a circuit switch, that is true.

7 Q And, in fact, you bill BellSouth for switching
8 it one time?

9 A Pursuant to today's agreement, that is correct.

10 COMMISSIONER JABER: May I ask a question in
11 that regard? Why do you only switch once and BellSouth is
12 required because of their system to switch twice? Is that
13 a technology issue or --

14 THE WITNESS: No. As I was saying earlier, I
15 think it's a function of the construction of a network at
16 particular points in time. I mean, the Bell network has
17 been in place for a long time. When it was built, the
18 reliance on copper facilities for distributing traffic was
19 what was -- I mean, that's what had to be dealt with. Due
20 to the short capacity, you know, short distances that
21 copper can facilitate traffic, there was a need to
22 establish this end office tandem network.

23 And I'm sure it's done as efficiently as that
24 network can be done. New entrants, of course, coming
25 along in the last several years, are faced with

1 essentially a better environment in terms of the
2 technology because we can rely on fiber that doesn't have
3 the distance limitations, has the high capacity
4 characteristics, and you can use the electronics
5 associated with those fiber systems to cover that -- where
6 BellSouth in that time period had to rely on a tandem end
7 office structure to meet its customers' needs, we're able
8 to rely on more of a single switch and the fiber.

9 And it has -- the economic impacts are
10 considerable as well. When you go to put a switch in as
11 an ALEC, you know, the first thing you've got to do is
12 find enough room to put a switch and all its power, and I
13 think you're talking in the range of 30,000 square feet
14 that you need. And that space is not easy to find, and
15 once you find it, it's not cheap. So there's a lot of
16 economic reasons that networks -- you know, ALECs rely on
17 a network deploying fiber transport and as few switches as
18 possible.

19 BY MR. EDENFIELD:

20 Q Will you agree with me that the ultimate
21 function that your switch performs in completing a call is
22 the equivalent of what BellSouth's end office switch
23 performs in the completion of a call?

24 A I would not agree.

25 COMMISSIONER JACOBS: Let me ask a question real

1 quick. In your opening, you talked about the efficiencies
2 that your architecture allows. I want to understand it in
3 a bit more detail. As I understand it, when you're
4 terminating traffic from another carrier, BellSouth in
5 this case, they're not -- whereas if you had -- let's take
6 this scenario. If you had a tandem, they will have had a
7 trunk to your tandem, and then had to do some switching
8 out of there to your end office?

9 THE WITNESS: If WorldCom had a tandem?

10 COMMISSIONER JACOBS: Right.

11 THE WITNESS: Yeah, if we interconnected at --
12 between our two tandems, the BellSouth tandem and our
13 tandem, that would -- you know, if we had a tandem as in
14 the Bell network, we would have another switch behind
15 that.

16 COMMISSIONER JACOBS: And then the originating
17 carrier again in this case would have had to have paid for
18 that, would have had to have paid for the trunking and the
19 tandem switching and the transport from your tandem to
20 your end office?

21 THE WITNESS: Yes.

22 COMMISSIONER JACOBS: Now, your network today,
23 though, offers transport from their tandem to where in
24 your network?

25 THE WITNESS: We interconnect at our switch, for

1 instance, which is just a single switch. Instead of the
2 tandem we were discussing earlier, that is our single
3 switch.

4 COMMISSIONER JACOBS: Okay. Now, I assume that
5 there are cost differences in that arrangement?

6 THE WITNESS: Between?

7 COMMISSIONER JACOBS: What you would have
8 incurred had you done the old arrangement versus what you
9 do now.

10 THE WITNESS: Yes.

11 COMMISSIONER JACOBS: And those efficiencies are
12 being derived somewhere. Who is deriving those, the
13 benefit of that?

14 THE WITNESS: WorldCom is deriving the benefit
15 of that, of those efficiencies.

16 COMMISSIONER JACOBS: And the issue here,
17 though, is that you by having attained that scope of
18 operations for lack of a better term, your ability to
19 engage in that architecture gives you the ability also, I
20 assume, to deliver more functionality to the originating
21 carrier. Is that the case?

22 THE WITNESS: Yes. I mean, if our switch -- I
23 mean, our position would certainly be yes. If our switch
24 were just an end office as in the Bell network today, I
25 mean, we would just have loops hanging off of that switch,

1 and, you know, you can't -- you're not going to cover the
2 distance with just, you know, a collo and unbundled loops.
3 When we add on the transport multiple fiber rings,
4 multiple SONET systems, and all the equipment that goes
5 with that, we're able to go out and cover the geographic
6 scope.

7 COMMISSIONER JACOBS: Okay. Thank you.

8 BY MR. EDENFIELD:

9 Q Mr. Argenbright, hadn't the FCC defined -- you
10 know, you keep saying going from your switch to the actual
11 end user, your end user, you keep talking about OC rings
12 and different things, hasn't the FCC said from the last
13 switch to the end user, you can call it what you want to,
14 it's a long loop, and it's always a loop?

15 A I don't think that's how they phrased it. I
16 believe they talk about loops and ports. I don't think
17 they discuss the impact of SONET facilities or
18 combinations of loops and transport.

19 Q BellSouth is currently paying you -- I may have
20 asked you this already, I'm sorry. BellSouth is currently
21 paying you for -- at the end office switching rate for the
22 function you are performing on their behalf; right?

23 A That is my understanding, yes.

24 Q Are they paying you transport as well?

25 A I don't know the answer to that. My

1 understanding -- my people who work in that area have
2 indicated we are being paid pursuant to the contract.

3 Q All right. Let's jump to the geography for a
4 minute. As I understand it, in Orlando, you're providing
5 or are capable of providing service to 14 different wire
6 centers?

7 A Rate centers.

8 Q I'm sorry, rate centers. Do you actually serve
9 customers in each of those rate centers?

10 A As of January, I'm sorry, July of this year, we
11 serve customers in most of those rate centers. I
12 believe --

13 Q Now, as I understood your testimony, you are
14 actually serving customers in 9 of the 14?

15 A Yes, I believe that is correct. I was trying to
16 flip to that page as well.

17 Q Okay.

18 A Okay. Yes.

19 Q Now, of the 14 rate centers that you show there
20 in red on your Orlando chart, only 6 of those 14 rate
21 centers are in BellSouth territory; correct?

22 A I believe -- yeah, one is in United, I believe.
23 Yes.

24 Q And you would agree that BellSouth does not
25 serve customers in the rate centers where you overlap with

1 Sprint?

2 A I would agree, yes.

3 Q Okay. So at least in Orlando, only 6 of 14 rate
4 centers would be considered comparable. Would you agree
5 with that?

6 A Six of 14 would be comparable in --

7 Q In other words, you're both providing service or
8 are capable of -- in other words, we're providing service
9 and that you're capable of providing service in those 6
10 rate centers?

11 A Okay. Within the Orlando market.

12 Q Yes.

13 A Yes, I believe that's the right number.

14 Q So everywhere where the chart that I'm looking
15 at here shows red with no green under it is geographic
16 area that you are serving that we are not? Or are capable
17 of serving, I should say.

18 A I believe you are serving -- I'm sorry.

19 Q I have no objection, if you need to get up to
20 point to something on that chart, feel free to do it if it
21 helps you explain.

22 COMMISSIONER JACOBS: I thought it was the
23 reverse.

24 A I'll do it this way. Okay. I'm sorry, ask your
25 question again.

1 Q Where there is red with no green under it, is
2 that where WorldCom's switch is capable of serving that
3 BellSouth does not serve?

4 A That is where WorldCom's switch provides local
5 service and BellSouth's -- these two local tandems do not
6 provide service.

7 Q So the green is BellSouth serving area, the red
8 is WorldCom serving area?

9 A That is correct.

10 Q Would you agree with me that according to your
11 map there, there appears to be substantial area being
12 served by WorldCom that is not served by BellSouth?

13 A I would agree, by these local tandems.

14 Q How many local tandems does BellSouth have? Is
15 that all of them, or have you just picked two of many?

16 A No, those are the two you'd have in your Orlando
17 market. That's all of your local tandems in the Orlando
18 market.

19 Q Of the six rate centers where the two networks
20 join or union, whatever you call it, are the same or
21 overlap --

22 A Right.

23 Q I'm sorry, I knew I would get to the words
24 eventually. Where the two networks overlap, in how many
25 of those rate centers is WorldCom actually serving a

1 customer? And I'm dancing very carefully around
2 confidential information, so please be careful.

3 MR. MELSON: And let me -- if you'll accept a
4 friendly amendment. I believe as a result of some
5 revisions to your witness's testimony, there actually are
6 two, the East Orange and the Oviedo, that in fact are not
7 served by BellSouth's tandems. So the chart we're looking
8 at was based on an earlier version of BellSouth
9 information and is sort of overly generous in what your
10 tandems serve.

11 MR. EDENFIELD: And I will make that correction
12 when Ms. Cox gets on the stand. But I will represent to
13 the record, if you need to modify one of your exhibits,
14 Mr. Melson, I have no objection to you doing that to
15 compensate for our having made an error.

16 MR. MELSON: I think if the record will just
17 reflect that the East Orange and Oviedo, which are shown
18 in green on Exhibit 6 are not, in fact, served by
19 BellSouth tandems, that will be more efficient than
20 spending the money to reproduce more color maps.

21 MR. EDENFIELD: That's fine, and I appreciate
22 your indulgence.

23 MR. MELSON: Thank you.

24 BY MR. EDENFIELD:

25 Q Mr. Argenbright, I guess I need to modify that a

1 little bit. It's actually -- thanks to Mr. Melson
2 reminding me, it's actually four rate centers that
3 BellSouth has that's covered under that red area of yours?

4 A Right. With that amendment, that's true.

5 Q Now, of those four rate centers that we have in
6 common, in how many of those centers does WorldCom
7 actually serve a customer?

8 A I was counting it up with all of the rate
9 centers. It would be --

10 CHAIRMAN DEASON: I'm sorry, you need to get to
11 a microphone.

12 A There would be two where we do not have
13 customers today.

14 Q Okay. So as far as actually serving customers,
15 you are only serving customers in half of the rate centers
16 where our two networks overlap in the Orlando area?

17 A Today.

18 Q Today. Now, also today, have you provided the
19 Commission with the geographic location within those two
20 rate centers where WorldCom is actually providing service
21 to a customer?

22 A We have not provided geographic location of
23 customers within the rate centers. No, we have not.

24 Q Would you agree as a premise that WorldCom
25 serves substantially less customers in those two rate

1 centers than BellSouth?

2 A I would agree that today we do serve -- or I
3 would agree that our market penetration certainly pales in
4 comparison to where BellSouth's customer count is today,
5 not that we wouldn't like to serve more customers.

6 COMMISSIONER JABER: Can I try to understand
7 this chart with this map with the changes you've made, the
8 corrections you've made? So when I see in red rate
9 centers served, those aren't necessarily the rate centers
10 that you are actually serving. They are rate centers that
11 you are capable of serving.

12 THE WITNESS: Those are rate centers that, yes,
13 either we have customers existing within the rate center,
14 or we have provisioned a network and configured a switch
15 to provide service in those rate centers if there are no
16 customers. When a rate center is opened up in our
17 network, there are a variety of engineering things that
18 have to go on so that the sales force is able to actually
19 market services.

20 COMMISSIONER JABER: Okay. So by looking at
21 this map, I wouldn't be able to tell where you are serving
22 as opposed to where you are capable of serving?

23 THE WITNESS: By the specific map, no.

24 COMMISSIONER JABER: And --

25 THE WITNESS: I'm sorry to interrupt. If you

1 look at having to actually have a customer today in a rate
2 center, yes, you would not be able to tell that from that
3 map.

4 COMMISSIONER JABER: And with the corrections to
5 Oviedo and East Orange that only applies to BellSouth.
6 BellSouth is not serving in the Oviedo/East Orange area,
7 but that doesn't affect your capability to serve?

8 THE WITNESS: That is correct.

9 COMMISSIONER JABER: Thank you.

10 BY MR. EDENFIELD:

11 Q In the four wire centers -- again, talking about
12 the Orlando area, the four wire centers where our coverage
13 overlaps, how many cities are there in that coverage area?

14 A I wouldn't be able to tell you number of cities
15 in the coverage area. I think I did in the confidential
16 pages talk about number of --

17 Q Please don't give that number out because that's
18 what I'm trying to avoid. The Commission will ultimately
19 get to see that under confidential seal.

20 MR. MELSON: They have it.

21 Q They have it, so I'm trying to dance around it
22 without saying it. Will you agree with me, looking on
23 Page 11 of your testimony, that there are substantially
24 more cities in the four rate centers where our networks
25 overlap than you are currently providing service in?

1 A I cannot answer -- I don't know exactly where
2 our customers are in terms of what cities they're -- I
3 know where they are by volume in rate centers, but I don't
4 know where they are within the rate center. So I don't
5 know how disperse they are with regard to number of
6 cities. I'm afraid I can't --

7 Q Okay. Turning to South Florida for a moment.
8 And again, we'll have to figure out which of the rate
9 centers were changed, if any, from the revised. I think
10 it's only in the Miami area.

11 A I think it's just the North Dade rate center is
12 the only difference.

13 Q Okay. And again, with respect to those areas,
14 have you provided the Commission with the location of
15 where those customers are?

16 A No, we have not.

17 Q And again, as I understand your testimony,
18 you're providing service -- I guess we'll have to
19 subtract. There were -- I believe you said 12, yeah, 12
20 rate centers in what I'm calling the South Florida area.
21 I'm going to combine the Pompano and the Miami.

22 A Sure, that's fine.

23 Q Where those customers are located in those 12
24 rate centers --

25 A That's correct, we're talking about 12.

1 Q -- how many BellSouth tandem switches are you
2 using to make that comparison?

3 A Two.

4 Q And where are they located? One in your top one
5 and one at the bottom?

6 A Yeah, Miami and Fort Lauderdale.

7 Q The top picture, the Fort Lauderdale, you know,
8 where it says Fort Lauderdale?

9 A Yes.

10 Q The area showing in red is the area from that
11 single switch that WorldCom has in Pompano Beach?

12 A For the most part, yes. These two pieces of the
13 map are separate only because of the limitations of the
14 graphics people. They should be -- you know, ideally it
15 would be a single map. But, yes, generally that's true.

16 Q And again, without getting into the confidential
17 data, will you agree that WorldCom serves more on-net
18 customers in more cities by the single Orlando switch than
19 it does from the three South Florida switches combined?

20 A I'm sorry, you're asking if I would agree that
21 our Orlando switch serves more customers than --

22 Q More on-net customers in more cities than the
23 three South Florida switches combined. Just do a
24 comparison. If you look on Page 11, Lines 4 through 13;
25 then look at Page 12, Lines 1 through 4.

1 A Right, right. Again, I have a hard time with --
2 I see where you're trying to go. I don't think that's
3 indicative of more customers in one area as opposed to the
4 other, though.

5 Q Okay. Would you agree with me that in the South
6 Florida area there are substantially more cities than the
7 number that you're currently serving covered by the
8 tandems?

9 A On an on-net basis?

10 Q (Nodding head.)

11 A I would say, yes, but that is not our complete
12 network.

13 Q Okay.

14 COMMISSIONER JABER: Mr. Edenfield, I'm trying
15 to understand your question. Are you asking whether -- I
16 think you're asking that in the Orlando area, you have
17 more customers via that one switch than you do in the
18 South Florida area via three switches; is that right?

19 MR. EDENFIELD: If the "you" you say both times
20 is referring to WorldCom, that is correct, that's the
21 question I'm saying.

22 COMMISSIONER JABER: Okay.

23 MR. EDENFIELD: In other words, what I'm trying
24 to get at with Mr. Argenbright is, WorldCom is serving
25 more cities and more customers in Orlando with one switch

1 than it is serving cities and customers in South Florida
2 with three switches.

3 COMMISSIONER JABER: I didn't understand that.

4 CHAIRMAN DEASON: Mr. Edenfield, what's the
5 relevancy of that?

6 MR. EDENFIELD: Well, part of the geographic
7 test is going to be, you need to show that you are
8 actually serving customers in a comparable geographic
9 area. And some of the cases, in fact, most of the cases
10 say that the capacity or ability to serve is not the same
11 thing as serving; that the rule requires you to be serving
12 customers in a comparable geographic area. What I'm
13 trying to demonstrate is that BellSouth's tandems are
14 serving multiple, multiple, multiple cities and multiple
15 customers, and from the testimony filed by
16 Mr. Argenbright, they are serving a very limited number of
17 cities and a very limited number of on-net customers;
18 therefore, their geographic coverage is not the same.

19 CHAIRMAN DEASON: Okay.

20 MR. EDENFIELD: But fortunately, I'm done with
21 that line of questioning anyway, so I will --

22 COMMISSIONER JABER: Okay. But that gives me a
23 question to the witness then. Does your geographical area
24 have to be the same under the FCC rule?

25 THE WITNESS: I believe it has to be comparable.

1 COMMISSIONER JABER: Has the FCC defined
2 comparability or similarly situated?

3 THE WITNESS: With regard to this issue, I'm not
4 aware that they have.

5 BY MR. EDENFIELD:

6 Q Let's just talk very, very quickly about the
7 cases that you've cited in your rebuttal testimony.

8 A Yes.

9 Q Now, you have cited for the Commission the
10 DeltaCom arbitration order from North Carolina?

11 A Yes.

12 Q Are you aware that this Commission has its own
13 DeltaCom arbitration order from that same round of
14 arbitrations?

15 A Bear with me just a second. Yes.

16 Q Would you agree with me that since the Florida
17 Commission has its own DeltaCom order from its own
18 DeltaCom arbitration that that is more persuasive than
19 anything from North Carolina?

20 A Well, certainly I would agree that this
21 Commission's decisions in Florida have the premier weight
22 for lack of a better term, but to compare the two
23 decisions, I don't know what ICG's/DeltaCom's network
24 looks like in Florida relative to what it looks like in
25 North Carolina. So I would hesitate to compare those, but

1 I would agree that this Commission's decisions certainly
2 have weight here.

3 Q More so than North Carolina's decisions would
4 have weight here?

5 A Yes.

6 Q Let's look at the Ohio decision real quick, and
7 you talk about it on Page 6 of your rebuttal, and you talk
8 about it being January 1st, 1997. Will you agree with me
9 that at the time of the Ohio decision, as you guys have
10 pointed out on some of the other cases, that the Rule
11 51.711 was either stayed or vacated at that time?

12 A I would agree during that time period the order
13 was stayed, yes.

14 Q Okay. Now, you also talk about -- you're citing
15 this Ohio case, I take it, as a basis for saying you
16 should just have a geographic one-prong test, an either/or
17 type test?

18 A Yes. It is an example of a Commission that
19 reviewed this and decided geographic scope was the test,
20 and if that hurdle was cleared, tandem rate applied.

21 Q Looking again at your rebuttal on Page 6, you
22 have a quote there from that decision.

23 A Okay.

24 Q Are you there?

25 A Yes.

1 Q The second sentence, it starts, "The
2 Commission's guidelines specify that," dah, dah, dah, dah,
3 dah, the Commission being referred to this is the Ohio
4 Commission; correct?

5 A Correct.

6 Q So in Ohio that Commission had a guideline that
7 said where a switch of a non-incumbent LEC serves a
8 geographic area, the appropriate rate is the tandem
9 switch; correct?

10 A That is what it reads, yes.

11 Q Are you aware of any similar guideline that the
12 Florida Commission may have?

13 A I am not.

14 Q Would you agree that the Florida Commission does
15 not have a guideline that requires a geographic area prong
16 only test?

17 A Beyond 51.711, no.

18 Q Under your terms that would be an FCC. I'm
19 talking about a state commission --

20 A I lapsed in my layman mode there. I'm sorry.
21 Yes. No, no, I agree there are no state guidelines.

22 Q Now, again, we alluded to earlier, turning to
23 Page 8, you talk about the Illinois decision. That was an
24 MCI case, in fact?

25 A Yes.

1 Q And that was decided, I guess, just after Rule
2 51.711 had been reinstated by the Eighth Circuit.

3 A The -- it's awfully close. We're talking about
4 the district court's decision?

5 Q Yes. My information shows that the rule was
6 reinstated on June 10th of '99, and according to your cite
7 here, this looks like this order was entered on June 22nd,
8 1999.

9 A Okay. Yes.

10 Q Do you happen to have a copy of that decision
11 attached to your testimony?

12 A If I can get you to bear with me one more time,
13 I think I can get to that.

14 Q Let me give you a copy of the Illinois decision.
15 Since this is an MCI/WorldCom case, are you familiar with
16 the facts underlying this case?

17 A Not specifically, no.

18 Q Were you involved in any way in trying the case
19 or anything like that?

20 A I was not.

21 Q Take a look, if you would, on Page 7. If you
22 look in the upper right-hand corner above the term
23 "Lexsee," Page 7. In that first bracketed paragraph
24 there, will you agree with me that the Illinois
25 Commission -- I guess it's the ICC -- utilized a two-prong

1 geographic and functionality test?

2 A I agree.

3 Q In that case, did you argue -- you being MCI and
4 WorldCom -- that the Supreme Court reinstating Rule
5 51.711 required a different test?

6 A That is correct.

7 Q Okay. Looking down to the second bracketed
8 portion of that decision, which is a reference to Footnote
9 9, will you agree that the U.S. District Court in Illinois
10 rejected that contention and said that the reinstatement
11 of Rule 51.711 in no way affected the two-prong test
12 utilized by the Illinois Commission?

13 A I believe I would say, yes, in part.

14 Q I'll accept that. Will you agree that at least
15 according -- in that next sentence there in Footnote 9
16 that at least according to the U.S. District Court that
17 the FCC's pricing regulations include the
18 functionality/geography test?

19 A Yes.

20 Q Now, there are other states that were
21 affected -- well, let me back up for a second. The
22 interconnection agreement at issue here involved more than
23 just Florida. Do you agree with that?

24 A We've left Illinois?

25 Q Yes. I'm sorry, I went back to the actual

1 interconnection agreement between the two parties. I'm
2 sorry. It is my last set of questions, so I'm trying to
3 get it out of here. The interconnection agreement is for
4 more than just Florida?

5 A It may be region-wide. I know that was a
6 practice. I'm not --

7 Q Okay. In fact, attached to your complaint is a
8 letter you had sent to BellSouth indicating that this was
9 going to be an issue for not only Florida but for Georgia,
10 Alabama, Mississippi. It wasn't all the states, but it
11 was the majority of them. Do you recall that?

12 A Yes.

13 Q Have you filed a similar complaint in the other
14 states?

15 A I'm not aware that we have, no.

16 Q And the last question I have is, why if MCI's
17 initial position, and I understand we have resolved the
18 issue, but if your initial position was that Rule
19 51.711 became effective upon the Supreme Court ordering it
20 to be reinstated why you waited until, I don't know, five
21 months later or almost six, you know, between five and six
22 months later to send a letter to BellSouth advising them
23 that you thought it was a change in the law?

24 A That's a good question. I would attribute it to
25 the -- essentially the workload and the folks that deal at

1 that level with the agreements and their ability to get
2 around to actually chasing those kinds of things as they
3 negotiate a variety of agreements from different areas. I
4 can only speculate to that.

5 MR. EDENFIELD: Okay. That's it. Thank you.

6 CHAIRMAN DEASON: Staff?

7 MR. VACCARO: Staff has no questions.

8 CHAIRMAN DEASON: Commissioners?

9 COMMISSIONER JABER: If you acknowledge that
10 other states have used the two-prong approach, then why
11 haven't you filed complaints with other state commissions?

12 THE WITNESS: That have used the two-prong test?

13 COMMISSIONER JABER: Uh-huh.

14 THE WITNESS: I'm going to have to fall back on
15 just a resource issue and the ability to take the issues
16 as they come up.

17 COMMISSIONER JABER: But you would concede that
18 there's nothing about what you do in Florida that would
19 make your application of the rule unique here.

20 THE WITNESS: No. I would -- our networks -- I
21 mean, our engineers build networks pretty much in the
22 efficient way that they do without regard to whether it's
23 in Florida or Missouri or wherever. I think the nature
24 here to the extent -- you know, as we've admitted, states
25 have taken looks at it both ways. We've got two-prong

1 tests; we've got single-prong tests. Here, I think our
2 view was our contract precluded us, and it really had not
3 been addressed, and that is why we're here.

4 CHAIRMAN DEASON: Redirect?

5 MR. MELSON: I've got a few.

6 CHAIRMAN DEASON: How extensive is your
7 redirect?

8 MR. MELSON: Five minutes.

9 CHAIRMAN DEASON: Go ahead.

10 MR. MELSON: My few is fewer than
11 Mr. Edenfield's few.

12 REDIRECT EXAMINATION

13 BY MR. MELSON:

14 Q Mr. Argenbright, you were asked some questions
15 about the Ninth Circuit decision. Could you pick up the
16 copy of that that Mr. Edenfield handed out?

17 A Got it.

18 Q Do you know in the Washington situation that was
19 being appealed in this order, did MFS have multiple
20 switches in Washington, or did it have a single switch?

21 A It was a single switch.

22 Q If you have a single switch, is it possible to
23 perform a traditional trunk-to-trunk tandem function?

24 A No. As defined by BellSouth, no, it would not
25 be.

1 Q You were asked if BellSouth sends a call to
2 MCI's network and MCI switches it once who gets the
3 benefit of the MCI network or WorldCom network
4 configuration. Do you recall that?

5 A Yes.

6 Q If BellSouth pays only the end office switching
7 rate and does not pay the tandem switching rate, who is
8 getting the economic benefit of the efficiency of
9 WorldCom's network?

10 A The monetary payment for the network certainly
11 comes to WorldCom, but if it is at the end office,
12 BellSouth receives a benefit by being able to receive
13 tandem coverage at an end office rate, essentially.

14 Q And in that situation is BellSouth avoiding more
15 cost on its network than it is paying for -- paying
16 WorldCom for terminating the call?

17 A Yes. If we provide coverage over the same
18 geographic area and are paid at the end office rate where
19 that same call terminated on the Bell network using tandem
20 office functionality, then, yes, they have avoided tandem
21 functions -- or tandem costs by paying for an ALEC's
22 network at an end office level.

23 Q There was some discussion of whether MCI's
24 network performs a single switching function or a multiple
25 switching function, and I believe you testified it

1 performs a single switching function; was that correct?

2 A That is correct.

3 Q Does the network perform a routing function
4 between the switch and the customer location?

5 A Yes. I mean, that was part of what I tried to
6 describe in talking about the SONET systems. When those
7 calls get placed on SONET systems, there's routing along
8 the network. The intelligence is in the network to ensure
9 that that call gets delivered to the end user that it is
10 destined to.

11 Q If you were looking at a typical BellSouth local
12 loop between an end office and a customer, is there any --
13 are there any electronics that perform a routing function
14 on that loop?

15 A No, not that I'm aware of.

16 Q So in that situation is the last leg of a call
17 between a BellSouth end office switch and its customer
18 technologically different from the last leg of a call
19 between the WorldCom switch and the WorldCom customer?

20 A Yes, I would agree.

21 Q I guess just so the record is clear, on the maps
22 that show the geographic coverage of the WorldCom
23 switches, what do you mean when you say a WorldCom switch
24 is capable of serving the geographic area that's outlined
25 either in red or in red cross-hatching?

1 A Again, either in red or the cross-hatching on
2 the handouts, our network -- it indicates the WorldCom
3 network as it is either -- it's doing one of two things.
4 It's either serving customers within that rate center, or
5 it has been configured to be able to serve customers in
6 that rate center.

7 Q And I guess my question is: What do you mean
8 when you say it's configured to be able to serve? What is
9 it that makes it capable of serving?

10 A The engineering steps that need to take place in
11 terms of, you know, one, acquiring the NXX necessary to
12 serve that rate center, establish trunking arrangements
13 within that switch, make sure there's capacity in the
14 switch, you know, those types of network things so that a
15 customer -- I mean, it all goes back to the sales force
16 being able to go to their tools, and, you know, once they
17 identify a potential customer, that happens, you know, in
18 a lot of instances to be a BellSouth customer, they need
19 to be able to identify, you know, how our network would
20 serve that customer.

21 Q And I believe the testimony was that in the
22 South Florida area, for example, you actually provide
23 service to customers in 11 of the 12 BellSouth rate
24 centers?

25 A I believe that's true, yes.

1 Q Could your sales force accept an order today
2 from a customer in that 12th rate center?

3 A Yes.

4 Q In your view, what would be the policy
5 implications if a Commission were to rule that in order to
6 have -- to be deemed to have comparable geographic scope
7 that a new competitor would have to serve customers
8 everywhere in every city in every exchange where BellSouth
9 serves customers? Would that be good policy?

10 A No. I mean, it's similar to the, you know,
11 traditional tandem requirement in that, you know, as a new
12 entrant, market share is not something -- I mean, it's
13 something we're certainly trying to acquire but, you know,
14 it is a slow process. And, you know, market penetration
15 is -- you know, if you add that on top of the geographic
16 scope requirement, you're just making it more difficult,
17 if not impossible, to get to.

18 Q In looking at the two confidential pages that
19 have been marked as Exhibit 4, you were asked about the --
20 I think without mentioning any numbers -- about comparing
21 the number of cities in which WorldCom has on-net
22 customers. Can you tell the Commission what an on-net
23 customer is?

24 A Yeah. An on-net customer is going to be someone
25 that is served via our own facilities. So it's the on-net

1 building description I gave earlier would be -- you know,
2 that's an on-net customer. It is not the only customers
3 we serve. A customer served out of an unbundled -- with
4 an unbundled loop connected to a collocation space
5 certainly is our local customer, but we would not consider
6 that customer as on-net. Nor would we -- when we serve a
7 customer with a loop -- a combination of a loop and
8 transport that too is not considered as an on-net
9 customer.

10 Q And when you say serve a customer with a
11 combination of loop and transport, is that what the
12 Commission may have heard in some prior case referred to
13 as a DS1 combo, a DS1 loop and DS1 transport?

14 A That's correct.

15 Q And do you, in fact, have a significant number
16 of customers that are served via those arrangements?

17 A That is a good component of our network, yes.

18 Q So the number of cities that are shown in your
19 exhibit or in Exhibit 4, the confidential pages of our
20 testimony, did not reflect any of those I'm going to call
21 them off-net customers?

22 A Yeah, that is correct. That's correct.

23 MR. MELSON: That's all I had. Thank you.

24 (Witness excused.)

25 CHAIRMAN DEASON: Exhibits.

1 MR. MELSON: Move Exhibits 3, 4, 5, and 6.

2 CHAIRMAN DEASON: Without objection?

3 MR. EDENFIELD: No objection.

4 CHAIRMAN DEASON: I show that Exhibits 3, 4,
5 5, and 6 are admitted.

6 (Exhibits 3, 4, 5, and 6 admitted into the
7 record.)

8 CHAIRMAN DEASON: We will recess for lunch. We
9 will reconvene at 1:50.

10 (Lunch recess was taken at 12:50 p.m.)

11 CHAIRMAN DEASON: Call the hearing back to
12 order. Mr. Edenfield.

13 MR. EDENFIELD: Commissioner Deason, before I
14 call Ms. Cox to the stand, earlier in the day I had
15 identified three cases that we were going to attach or add
16 to the official recognition list. For some reason, I only
17 had copies of two of those, so just for record, let me
18 identify the third one. And I will provide a copy either
19 by electronically or by paper tomorrow to everyone who
20 would like to have one, Mr. Vaccaro and Mr. Melson.

21 It is a United States District Court for the
22 Western District of Washington. It is US West
23 Communications, Inc., versus the Washington Utilities and
24 Transportation Commission. I have a case number,
25 C97-5686-BJR, and the Lexis cite on that is 1998 U.S.

1 District Lexis 22883. And with that, I will call my first
2 witness.

3 CHAIRMAN DEASON: Yes, please proceed.

4 MR. MELSON: Commissioner Deason, while we're
5 doing housekeeping, I also had one item that we were
6 adding to the official recognition list, and I don't have
7 copies of that either. The cite on that -- it's actually
8 two documents. It's an arbitrator's report and decision
9 in Washington Utilities and Transportation Commission
10 Docket Number UT-960323, and then it is the follow-on
11 order approving negotiated and arbitrated interconnection
12 agreement in that same docket. And again, I'll provide
13 BellSouth and Staff with copies of that.

14 CHAIRMAN DEASON: Very well.

15 MR. EDENFIELD: With that, BellSouth would call
16 Cynthia Cox.

17 - - - - -

18 CYNTHIA K. COX

19 was called as a witness on behalf of BellSouth
20 Telecommunications, Inc. and, having been duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. EDENFIELD:

24 Q Ms. Cox, would you confirm that you were
25 previously sworn?

1 A Yes, I was.

2 Q State your name for the record, please.

3 A My name is Cynthia Cox.

4 Q And your employer?

5 A I work for BellSouth Telecommunications.

6 Q Did you cause to be filed in this proceeding 12
7 pages of direct testimony with no exhibits attached?

8 A Yes, I did.

9 Q Do you have any changes, corrections, or
10 deletions to make to that direct testimony?

11 A Yes, I do have one correction. It's on Page 5,
12 Line 25. I need to correct the order number. It should
13 read PSC-97-0294-FOF-TP. And I need to correct the docket
14 number. The docket number should be 961230-TP.

15 Q Do you have any other changes or corrections to
16 make to that testimony?

17 A No, not to the direct testimony.

18 MR. EDENFIELD: At this time, we would move the
19 direct testimony of Ms. Cox into the record.

20 CHAIRMAN DEASON: Without objection, it shall be
21 so inserted.

22

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF CYNTHIA K. COX
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991755-TP
JUNE 16, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Cincinnati in 1981 with a Bachelor of Business Administration degree in Finance. I graduated from the Georgia Institute of Technology in 1984 with a Master of Science degree in Quantitative Economics. I immediately joined Southern Bell in the Rates and Tariffs organization with the responsibility for demand analysis. In 1985 my responsibilities expanded to include administration of selected rates and tariffs including preparation of tariff filings. In 1989, I accepted an assignment in the North Carolina regulatory office where I was BellSouth's primary liaison with the North Carolina Utilities Commission Staff and

1 the Public Staff. In 1993, I accepted an assignment in the Governmental Affairs
2 department in Washington D.C. While in this office, I worked with national
3 organizations of state and local legislators, NARUC, the FCC and selected House
4 delegations from the BellSouth region. In February 2000, I was appointed Senior
5 Director of State Regulatory.

6
7 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

8
9 A. The purpose of my direct testimony is to respond to the issues addressed in the
10 complaint filed by MCImetro Access Transmission Services, LLC (“MCIIm”) and
11 MCI WorldCom Communications, Inc. (“MWC”) (jointly “WorldCom”) on
12 November 23, 1999 with the Florida Public Service Commission (“Commission”).
13 Specifically, I will respond to WorldCom’s allegations that BellSouth has breached
14 its agreement with WorldCom by refusing to negotiate an amendment that
15 WorldCom believes is necessary based on WorldCom’s interpretation of the
16 requirements of FCC Rule 51.711. In this regard, WorldCom is seeking to amend
17 its Interconnection Agreement so that it can charge BellSouth tandem
18 interconnection rates based solely on the claim that WorldCom’s switches serve a
19 geographic area comparable to the area served by BellSouth’s tandem switches,
20 irrespective of whether WorldCom’s switch performs local tandem switching
21 functions.

22
23 ***Issue 1: Under FCC Rule 51.711, would MCIIm and MWC be entitled to be compensated***
24 ***at the sum of the tandem interconnection rate and the end office interconnection rate for***

25

1 *calls terminated on their switches if those switches serve a geographic area comparable*
2 *to the area served by BellSouth's tandem switches?*

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. In its Order No. PSC-96-1579-FOF-TP, dated December 31, 1996, the Commission
7 established reciprocal compensation rates for end office switching and tandem
8 switching. In that same order, the Commission determined rates for common
9 transport. BellSouth's position is that under the FCC's Rule 51.711 and this
10 Commission's prior Orders, as well as the plain language in the current
11 BellSouth/WorldCom Interconnection Agreement, WorldCom should be
12 compensated only for those functions WorldCom actually performs. If a switch is
13 not used to provide a tandem function during a specific call, it is not appropriate to
14 pay reciprocal compensation for the tandem switching function. In short,
15 WorldCom should only be compensated for the functions that it provides.

16

17 Contrary to the plain language of FCC Rule 51.711, prior Orders of the
18 Commission and the BellSouth/WorldCom Interconnection Agreement, WorldCom
19 proposes that the end office interconnection rate plus the tandem interconnection
20 rate be applied to local calls in every instance, regardless of which elements are
21 actually used to terminate and transport the local traffic.

22

23 Q. UNDER RULE 51.711, IS WORLDCOM ENTITLED TO CHARGE
24 BELLSOUTH THE TANDEM INTERCONNECTION RATE SOLELY BASED
25 ON THE GEOGRAPHIC AREA SERVED BY WORLDCOM'S SWITCHES?

1

2 A. No. Section 51.711 of the FCC's rules is titled "Symmetrical reciprocal
3 compensation", and specifically sets forth the requirement that "rates for transport
4 and termination of local telecommunications traffic shall be symmetrical".
5 (§51.711(a)). Subpart (1) of this same section provides that, "symmetrical rates are
6 rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC
7 for transport and termination of local traffic equal to those that the incumbent LEC
8 assess upon the other carrier for the same services." (§51.711(a)(1)) (emphasis
9 added). While WorldCom downplays this part of the rule, 51.711(a)(1) fully
10 comports with the FCC's discussion of Rule 51.711 setting forth a two-prong test
11 that must be satisfied prior to an alternative local exchange carrier ("ALEC") being
12 entitled to reciprocal compensation at the incumbent local exchange carrier's
13 ("ILEC's") tandem interconnection rate. In paragraph 1090 of the FCC's *First*
14 *Report and Order*, (CC Docket 96-98), issued August 6, 1996, the FCC noted:

15 We find that the "additional costs" incurred by a LEC when transporting and
16 terminating a call that originated on a competing carrier's network are likely
17 to vary depending on whether tandem switching is involved. We, therefore,
18 conclude that states may establish transport and termination rates in the
19 arbitration process that vary according to whether the traffic is routed
20 through a tandem switch or directly to the end-office switch. In such event,
21 states shall also consider whether new technologies (e.g., fiber ring or
22 wireless networks) *perform functions similar to those performed by an*
23 *incumbent LEC's tandem switch* and thus, whether some or all calls
24 terminating on the new entrant's network should be priced the same as the
25 sum of transport and termination via the incumbent LEC's tandem switch.

1 Where the interconnecting carrier's switch serves a geographic area
 2 comparable to that served by the incumbent LEC's tandem switch, the
 3 appropriate proxy for the interconnecting carrier's additional costs is the
 4 LEC tandem interconnection rate. (emphasis added)

5

6 In short, the FCC identified two requirements that WorldCom, or any ALEC, must
 7 satisfy in order to be compensated at the tandem interconnection rate: (1)

8 WorldCom's switch must perform functions similar to those performed by

9 BellSouth's tandem switch; and (2) WorldCom's switch must serve a geographic

10 area comparable to the geographic area served by BellSouth. Clearly, the burden of

11 proof is on WorldCom to prove that it satisfies both requirements of the FCC's test.

12

13 Q. HAS THE COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

14

15 A. Yes. All of the Commission's prior decisions on this issue are consistent with the
 16 FCC's two-prong test. Indeed, as WorldCom is well aware, one of these decisions
 17 involved MCI. In that case the Commission held: "We find that the Act does not
 18 intend for carriers such as MCI to be compensated for a function they do not
 19 perform. Even though MCI argues that its network performs 'equivalent
 20 functionalities' as Sprint in terminating a call, MCI has not proven that it actually
 21 deploys both tandem and end office switches in its network. If these functions are
 22 not actually performed, then there cannot be a cost and a charge associated with
 23 them. Upon consideration, we therefore conclude that MCI is not entitled to
 24 compensation for transport and tandem switching unless it actually performs each
 25 function." Order No. ~~PSC-97-0297-FOF-TP~~ ^{PSC-97-0294-FOF-TP}, Docket ~~962120-TP~~ ^{961230-TP}, at 10-11 (March

1 14, 1997). See also Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, at 4
2 (Dec. 16, 1996) (“The evidence in the record does not support MFS’ position that
3 its switch provides the transport element; and the Act does not contemplate that the
4 compensation for transporting and terminating local traffic should be symmetrical
5 when one party does not actually use the network facility for which it seeks
6 compensation”).

7
8 More recently, the Commission considered the Rule 51.711 two-prong test in the
9 ICG Arbitration proceeding to conclude, “While FCC Rule 47 C.F.R. Section
10 51.711 allows us to provide for reciprocal compensation at the tandem rate if the
11 switch of a carrier other than an incumbent LEC serves a geographic area
12 comparable to that served by the incumbent LEC’s tandem switch, the evidence of
13 record does not provide an adequate basis to determine that ICG’s network will
14 fulfill this geographic criterion. Similarly, the evidence of record in this arbitration
15 does not show that ICG will deploy both a tandem and end office switch in its
16 network. In addition, since tandem switching is described by both parties as
17 performing the function of transferring telecommunications between two trunks as
18 an intermediate switch or connection, we do not believe this function will or can be
19 performed by ICG’s single switch.” Order No. PSC-00-0128-FOF-TP, Docket No.
20 990691-TP at 10 (January 14, 2000).

21
22 It is clear from the Commission’s prior decisions that WorldCom must satisfy both
23 requirements of the FCC’s rule in order to receive compensation for the tandem
24 switching function. WorldCom fails to show that it satisfies the geographic area
25 prong of the test and does not even allege in the Complaint that it meets the

1 functionality prong.

2

3 *Issue 2: Do MCI's and MWC's switches serve geographic areas comparable to those*
4 *served by BST tandem switches?*

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. Preliminarily, BellSouth notes again that this issue only addresses one prong of a
9 two-prong test that must be satisfied in order for WorldCom to receive reciprocal
10 compensation based on a tandem switching rate. Moving beyond that, BellSouth
11 notes that according to the FCC's Rule 51.711(a)(3), to establish that WorldCom's
12 switch serves a geographic area comparable to that served by the ILEC's tandem
13 switches, WorldCom must show the particular geographic area its switch actually
14 serves, not the geographic area that its switch may be capable of serving. In order
15 to make a showing that WorldCom's switch actually serves a geographic area equal
16 to or greater than that served by BellSouth's tandem, WorldCom must provide
17 information as to the location of its customers or, at the very least, give some
18 indication as to how its customers are actually being served by WorldCom's switch.
19 This is, of course, exactly what a United States District Court told MCI in Illinois,
20 when MCI evidently tried to get by without proving the actual geographic coverage
21 of MCI's switches. In that case, the U.S. District Court specifically determined that
22 the test required by the FCC's rule is a functionality/geography test. In its Order,
23 the Court stated:

24

25

In deciding whether MCI was entitled to the tandem interconnection rate,

1 the ICC applied a test promulgated by the FCC to determine whether MCI's
2 single switch in Bensonville, Illinois, performed functions similar to, and
3 served a geographical area comparable with, an Ameritech tandem switch.⁹
4 (emphasis added)

5
6 ⁹MCI contends the Supreme Court's decision in IUB affects resolution of
7 the tandem interconnection rate dispute. It does not. IUB upheld the FCC's
8 pricing regulations, including the 'functionality/geography' test. 119 S. Ct.
9 at 733. MCI admits that the ICC used this test. (Pl. Br. At 24.) Nevertheless,
10 in its supplemental brief, MCI recharacterizes its attack on the ICC decision,
11 contending the ICC applied the wrong test. (Pl. Supp. Br. At 7-8.) But
12 there is no real dispute that the ICC applied the functionality/geography test;
13 the dispute centers around whether the ICC reached the proper conclusion
14 under that test. (emphasis added) (*MCI Telecommunications Corp. v.*
15 *Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22,*
16 *1999)*).

17
18 Indeed, the Ninth Circuit Court of Appeals viewed the rule in the same way, finding
19 that:

20
21 [t]he Commission properly considered whether MFS's switch performs
22 similar functions and serves a geographic area comparable to US West's
23 tandem switch." (*U.S. West Communications v. MFS Intelenet, Inc, et. al,*
24 *193 F. 3d 1112, 1124*)

25

1 In the case at hand, WorldCom has not offered any proof that its switch currently
2 serves areas comparable to BellSouth's tandem. WorldCom has not provided the
3 Commission with the location of WorldCom's customers in Florida, information
4 that would be essential for the Commission to determine whether WorldCom's
5 switches actually serve areas comparable to BellSouth's tandem switches. Absent
6 such evidence, WorldCom has clearly failed to satisfy its burden of proof on this
7 issue. Accordingly, even if WorldCom could show that its interpretation of Rule
8 51.711 were correct, and it cannot, WorldCom's failure to provide evidence on this
9 issue is sufficient grounds for the Commission to dismiss this complaint.

10

11 ***Issue 3: Should BellSouth be required, pursuant to Part A Section 2.2 or 2.4 of the***
12 ***interconnection agreement, to execute amendments to its interconnection agreements***
13 ***with MCI and MWC requiring BellSouth to compensate MCI and MWC at the sum***
14 ***of the tandem interconnection rate and the end office interconnection rate for calls***
15 ***terminated on their switches that serve a geographic area comparable to the area served***
16 ***by BellSouth's tandem switches?***

17

18 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

19

20 A. There is nothing in FCC Rule 51.711 that conflicts with the express provisions of
21 the current BellSouth/WorldCom Interconnection Agreement. The essence of the
22 language contained in Part A, Section 2.2 and Section 2.4 is that the parties will
23 negotiate amendments to any provisions that are made unlawful by the
24 promulgation of any rules, regulations, orders issued by the FCC or this
25 Commission. Contrary to WorldCom's assertion, there are no provisions in the

1 current agreement that are made “unlawful” by the reinstatement of the FCC Rule
2 51.711. In fact, the Commission has considered this issue after reinstatement of
3 Rule 51.711 and reached conclusions consistent with the Commission’s prior
4 Orders.

5
6 Q. DOES THE REINSTATEMENT OF FCC RULE 51.711 IMPACT THE
7 RECIPROCAL COMPENSATION PROVISIONS IN THE CURRENT
8 WORLDCOM/BST INTERCONNECTION AGREEMENT?

9
10 A. No, because the Interconnection Agreement is already consistent with the FCC’s
11 Rule 51.711 and the Commission’s prior Orders. Section 2.4.2 in Part IV of the
12 current Interconnection Agreement clearly provides that BellSouth will compensate
13 WorldCom at the appropriate symmetrical interconnection rate(s) for each function
14 WorldCom actually performs in terminating local traffic from BellSouth. This
15 provision comports with FCC Rule 51.711(a) (1), which addresses symmetrical
16 rates as being equivalent rates that two carriers assess upon each other for providing
17 the same services for the transport and termination of local telecommunications
18 traffic received from the other carrier. In order to be compliant with Rule 51.711,
19 with prior Commission Orders, and with the provisions of the current
20 Interconnection Agreement, it is appropriate for WorldCom to charge BellSouth the
21 tandem interconnection rate only when WorldCom performs the tandem switching
22 function to terminate BellSouth originated local traffic. The same approach holds
23 true when BellSouth performs the tandem switching function to terminate local
24 traffic from WorldCom; BellSouth would charge WorldCom the tandem
25 interconnection rate.

1

2 ***Issue 4: Are MCI and MWC entitled to a credit from BellSouth equal to the additional***
3 ***per minute amount of the tandem interconnection rate from January 25, 1999 to the***
4 ***earlier of (i) the date such amendments are approved by the Commission, or (ii) the date***
5 ***the interconnection agreements are terminated?***

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. BellSouth has appropriately paid WorldCom for terminating BellSouth's local
10 traffic. This payment has been made consistent with FCC Rule 51.711, prior
11 Commission Orders and the current Interconnection Agreement. In no situation is it
12 appropriate for this Commission to require BellSouth to pay or credit monies to
13 WorldCom for transport and termination functions when those functions are not
14 provided, regardless of the geographic area WorldCom's switch may serve.
15 Furthermore, there are no provisions in the current Interconnection Agreement that
16 would place such obligation upon BellSouth.

17

18 However, should the Commission determine that WorldCom's switch performs the
19 tandem switching function and serves a geographic area comparable to BellSouth's
20 tandem switches, any obligation to pay WorldCom the tandem switching rate
21 should be prospective only. Nothing in Part A, Sections 2.2 and 2.4 require
22 amendments under these sections to be applied retroactively. To the contrary, these
23 sections anticipate that the parties will negotiate new language consistent with any
24 change in the law and, if unsuccessful, will submit to dispute resolution under the
25 terms of the agreement.

1

2 If the Commission, however, determines that retroactive payments are appropriate,
3 those payments should not be retroactive to January 25, 1999. As WorldCom noted
4 in its correspondence to BellSouth on July 8, 1999, the Eighth Circuit Court of
5 Appeals did not reinstate Rule 51.711 until June 10, 1999. Under any
6 circumstances, it is clear that WorldCom did not request amendment negotiations
7 until July 8, 1999. If the Commission deems that the Interconnection Agreement
8 requires retroactive payments, those payments should only be retroactive to the date
9 WorldCom requested that the agreement be amended.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12

13 A. Yes.

14

15

16 (#215931v2)

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25

1 BY MR. EDENFIELD:

2 Q Ms. Cox, did you also cause to be filed in this
3 proceeding seven pages of rebuttal testimony?

4 A Yes, I did.

5 Q And did that have one exhibit attached to it?

6 A Yes, it did.

7 MR. EDENFIELD: At this time, we would move
8 the -- I'm sorry.

9 Q Do you have any deletions or corrections to that
10 testimony?

11 A Yes, I do have I guess two corrections. And it
12 would be to replace the Orlando LATA map showing the local
13 tandem serving area and to replace the Southeast LATA
14 showing the local tandem serving area. We talked about
15 them earlier, and I apologize for any confusion that
16 created. The change is just to reflect where we use the
17 local tandem for completing local calls within the basic
18 local calling area as opposed to extended local calling
19 areas.

20 MR. EDENFIELD: Thank you. We're placing out,
21 for the record, copies of the correct version of the maps,
22 and I believe we had already discussed them earlier in the
23 day. At this time, I would like to move Ms. Cox's
24 rebuttal testimony into the record as if read.

25 CHAIRMAN DEASON: Without objection, it shall be

1 so inserted.

2 MR. EDENFIELD: And if I could have marked for
3 identification as a composite exhibit CKC-1 revised.

4 CHAIRMAN DEASON: Okay. CKC-1 revised will be
5 Exhibit 7.

6 (Exhibit 7 marked for identification.)

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF CYNTHIA K. COX
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 991755-TP
5 JULY 17, 2000
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?
16

17 A. Yes. I filed direct testimony in this proceeding on June 16, 2000
18

19 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?
20

21 A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by
22 MCImetro Access Transmission Services, LLC's ("MCI's") and MCI WorldCom
23 Communications, Inc.'s ("MWC's") (jointly "WorldCom's") witness Mr. Mark E.
24 Argenbright on June 16, 2000 with the Florida Public Service Commission
25 ("Commission"). Specifically, I will respond to WorldCom's allegations that

1 BellSouth has breached its agreement with WorldCom by refusing to negotiate an
2 amendment that WorldCom believes is necessary based on WorldCom's
3 interpretation of the requirements of FCC Rule 51.711.
4

5 Q. PLEASE ADDRESS MR. ARGENBRIGHT'S CLAIM ON PAGE 12 THAT THE
6 ONLY RELEVANT CRITERIA FOR DETERMINING ELIGIBILITY FOR
7 TANDEM SWITCHING CHARGES IS THE GEOGRAPHIC AREA SERVED.
8

9 A. Mr. Argenbright is incorrect. As I discussed in my direct testimony, the FCC has a
10 two-part test to determine if a carrier is eligible for tandem switching 1) an ALEC's
11 switch must serve the same geographic area as the ILEC's tandem switch, and 2) an
12 ALEC's switch must perform tandem switching functions. Mr. Argenbright doesn't
13 even discuss the functionality of WorldCom's switches in his testimony. His
14 contention that the higher rate must be applied automatically simply based on the
15 geographic area its switch may serve is incorrect. His use of the term "safe harbor"
16 clearly reveals WorldCom's real intention, which is to seek recovery of costs it
17 doesn't incur.
18

19 Q. ON PAGE 13, MR. ARGENBRIGHT QUOTE'S FCC RULE 51.711(a), PLACING
20 EMPHASIS ON SUBPART (3) OF THE RULE AND BASICALLY IGNORING
21 SUBPART (1). HAS MR. ARGENBRIGHT ACCURATELY INTERPRETED
22 THIS RULE?
23

24 A. Absolutely not. Mr. Argenbright self-servingly ignores subpart (1) of this rule.
25 Subpart (1) clearly states that symmetrical rates assessed by an ALEC upon an

1 ILEC for transport and termination of local traffic are equal to the rates “that the
2 incumbent LEC assesses upon the other carrier of the *same services*”. (Emphasis
3 added). “Same services” equates to the same functions that the ILEC performs to
4 terminate the ALEC’s originating local traffic. WorldCom is only entitled to assess
5 tandem switching charges upon BellSouth when WorldCom actually performs the
6 tandem switching function and serves an area comparable to the area served by
7 BellSouth’s tandem switch to terminate a local call originating from a BellSouth
8 end user. Similarly, BellSouth may only seek recovery of tandem switching
9 charges from WorldCom when BellSouth performs the tandem switching function
10 to terminate a local call originating from a WorldCom end user.

11
12 Q. ON PAGE 14, MR. ARGENBRIGHT STATES THAT IT IS POSSIBLE FOR
13 WORLDCOM TO ACCESS AND SERVE A LARGE GEOGRAPHIC AREA
14 FROM A SINGLE SWITCH SINCE WORLDCOM USES “OPTICAL FIBER
15 RINGS WITH SONET TRANSMISSION”. DOES WORLDCOM’S USE OF
16 THIS TECHNOLOGY HAVE ANY RELEVANCE ON WHETHER
17 WORLDCOM IS ENTITLED TO CHARGE FOR TANDEM SWITCHING?

18
19 A. No. Mr. Argenbright’s discussion concerning the technology that WorldCom uses
20 to “extend the reach of their network” simply points out that WorldCom may
21 deploy long loops to reach end users. As the FCC made perfectly clear, reciprocal
22 compensation is not paid for loop costs, but rather for the cost of transporting and
23 terminating local calls. Specifically, the FCC held: “costs of local loops and line
24 ports associated with local switches do not vary in proportion to the number of calls
25 terminated over these facilities. We conclude that such non-traffic sensitive costs

1 should not be considered ‘additional costs’ when a LEC terminates a call that
2 originated on the network of a competing carrier.” *See* First Report and Order, *In*
3 *re: Implementation of Local Competition Provisions in the Telecommunications Act*
4 *of 1996*, 11 FCC Rcd 15499, CC Docket No. 96-98, ¶ 1057 (Aug. 8, 1996) (“First
5 Report and Order”). Obviously, the FCC intends for the terminating LEC to
6 recover its loop costs from the end user customer, not the originating LEC.
7

8 Q. PLEASE RESPOND TO WORLDCOM’S CLAIM THAT ITS SWITCH COVERS
9 A GEOGRAPHIC AREA COMPARABLE IN SCOPE TO BELLSOUTH’S
10 TANDEM.

11
12 A. Mr. Argenbright has provided two maps indicating the geographic area
13 WorldCom’s switch “covers in the Orlando and Ft. Lauderdale/Miami markets.”
14 Apparently, what WorldCom means by “covers” is that its switch is capable of
15 serving these areas. It is a very simple matter to outline areas on a map and claim
16 that its switches serve these areas. However, in order to establish that WorldCom’s
17 switch serves a geographic area comparable to that served by the incumbent local
18 exchange carrier’s tandem switches, as required by FCC rules, WorldCom must
19 show the particular geographic area it serves, not the geographic area that its switch
20 may be capable of serving. (*See* 47 C.F.R. § 51.711(a)(3)). In order to make a
21 showing that WorldCom’s switch serves a geographic area equal to or greater than
22 that served by BellSouth’s tandem, WorldCom must provide information as to the
23 location of its customers. Although the maps attached to Mr. Argenbright’s
24 testimony supposedly reflect the “Rate Centers served by MCIW”, WorldCom has
25 presented no evidence to support its assertion. Accordingly, even if WorldCom

1 were able to persuade this Commission to read the functionality requirement out of
2 FCC Rule 51.711, WorldCom still would not be entitled to be compensated at the
3 tandem interconnection rate.

4
5 Q. WHAT EVIDENCE DOES BELLSOUTH PRESENT TO DEMONSTRATE ITS
6 TANDEM SWITCH COVERAGE?

7
8 A. Attached to this testimony as Exhibit CKC-1 are BellSouth's maps indicating the
9 areas served by BellSouth's Access Tandems and Local Tandems in the Orlando
10 and Southeast LATAs.

11
12 BellSouth's Access Tandems serve wire centers as shown on the maps in various
13 colors as noted in the legend of each map. These tandems provide both local and
14 long distance functions. Any independent company exchanges, ALEC switches or
15 other carrier's switching entities that are homed to or subtend BellSouth's Access
16 Tandems are also included. Note that the independent company wire centers have
17 an X in the 7th character position. BellSouth's local tandems serve wire centers as
18 shown on the maps in various colors as noted in the legend on each map.

19 BellSouth's tandems are actually serving customers throughout the areas reflected
20 on the maps.

21
22 Q. WHY HAS BELLSOUTH PROVIDED MAPS THAT SHOW THE
23 GEOGRAPHIC AREA SERVED BY ITS ACCESS TANDEMS, AS WELL AS
24 BY ITS LOCAL TANDEMS?

25

1 A. Before the advent of local competition, Access Tandems only provided for
2 interchange of long distance traffic between local exchange companies and
3 interexchange carriers and for the switching of intraLATA toll traffic on behalf of
4 local exchange carriers. Local tandems, by comparison, were and still are used to
5 handle local traffic only.

6
7 With local competition, Access Tandems also began to handle local traffic on
8 behalf of ALECs who chose to interconnect at the Access Tandem. BellSouth
9 provides interconnection at its Access Tandem switches for an ALEC's originating
10 intraLATA toll traffic, interLATA toll traffic and local traffic. For local traffic
11 originated by an ALEC's end user and routed through BellSouth's Access Tandem,
12 BellSouth will route the traffic to the appropriate end office switch for delivery of
13 the call to the terminating end user. Alternatively, the ALEC may elect to
14 interconnect at BellSouth's local tandem switches instead of BellSouth's Access
15 Tandem switches for the ALEC's originating local traffic only. However, if an
16 ALEC elects to interconnect at a BellSouth local tandem switch for handling its
17 originating local traffic, that ALEC must still interconnect at an Access Tandem for
18 its toll traffic (whether intraLATA or interLATA).

19
20 Because both local tandems and Access Tandems handle local traffic, BellSouth has
21 provided maps showing the areas served by its five Access Tandems and its seven
22 local tandems in the Orlando and Southeast Florida LATAs.

23

24 Q. ON PAGE 17, MR. ARGENBRIGHT CONTENDS THAT THE EIGHTH
25 CIRCUIT COURT'S REINSTATEMENT OF THE FCC'S RULE 51.711

1 REQUIRES THAT THE INTERCONNECTION AGREEMENT BE AMENDED.
2 PLEASE COMMENT.

3
4 A. Again, Mr. Argenbright's contention appears to be based on his erroneous
5 interpretation of the FCC's rules that WorldCom is entitled to charge BellSouth the
6 tandem interconnection rate irrespective of whether WorldCom's switch actually
7 performed tandem switching functions. The language in the current Interconnection
8 Agreement specifically states "When BellSouth terminates calls to MCI's
9 subscribers using MCI's switch, BellSouth shall pay MCI the appropriate
10 tandem interconnection rate(s). BellSouth shall not compensate MCI for transport
11 and tandem switching unless MCI actually performs each function." (Attachment
12 IV, Section 2.4.2) The reciprocal compensation requirements concerning tandem
13 switching and transport in the current Interconnection Agreement are consistent
14 with the FCC's rules. As such, the reinstatement of FCC Rule 51.711 did not
15 render these requirements "unlawful" as WorldCom contends.

16
17 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

18
19 A. Yes.

20
21 (#218398)

1 BY MR. EDENFIELD:

2 Q Ms. Cox, you did you prepare a summary of your
3 testimony?

4 A Yes, I did.

5 Q Would you give that now, please.

6 A Yes. Good afternoon. I'm here today to present
7 BellSouth's position on the issues addressed by WorldCom
8 in their complaint against BellSouth. This complaint
9 deals with the applicability of the tandem switching rate
10 and whether the current interconnection agreement between
11 BellSouth and WorldCom should be amended to require
12 BellSouth to compensate WorldCom for the tandem switching
13 function. FCC rules require that carriers should only be
14 compensated for the tandem switching if they perform that
15 function for local traffic and actually serve an area
16 comparable to the area served by BellSouth's tandem
17 switch.

18 The Commission has consistently ruled that both
19 requirements are relevant to the determination of whether
20 the tandem switching rate applies. WorldCom, on the other
21 hand, contents to geographic comparability is sufficient;
22 however, WorldCom has not demonstrated that it meets that
23 requirement. WorldCom claims that its switches are
24 capable of serving areas comparable to BellSouth's
25 tandems; however, that finding is insufficient as an

1 Illinois court has pointed out. WorldCom has not
2 demonstrated that it serves an area comparable to
3 BellSouth's tandem. Consistent with the Illinois court
4 ruling, the information provided by WorldCom is
5 insufficient to make such a determination. However, even
6 if one were to assume that WorldCom's switch covers a
7 geographic area similar to BellSouth's tandem, it is clear
8 that WorldCom's switch is not performing the tandem
9 function for local traffic; therefore, the Commission
10 should deny WorldCom's request for tandem switching
11 compensation.

12 While I am not a lawyer, it appears to me that
13 WorldCom's claim that the current interconnection
14 agreement must be amended in order to comply with the law
15 is unfounded. There are no provisions in the current
16 interconnection agreement that are made unlawful by the
17 reinstatement of FCC Rule 51.711. The current
18 interconnection agreement between the parties is already
19 consistent with FCC rules and this Commission's prior
20 orders. In fact, the current language contained in the
21 agreement enables WorldCom to charge BellSouth the tandem
22 interconnection rate when WorldCom performs the tandem
23 switching function to terminate BellSouth originated local
24 traffic.

25 WorldCom is simply seeking to amend the

1 interconnection agreement so that WorldCom will be
2 compensated for the tandem switching function for all
3 calls regardless of whether WorldCom actually performs the
4 tandem switching function. Consistent with the
5 Commission's past rulings, BellSouth is requesting that
6 the Commission find that WorldCom is not entitled to the
7 tandem interconnection rate when it does not perform
8 tandem switching functions. Furthermore, it is not
9 necessary for the current interconnection agreement to be
10 amended. That concludes my summary. Thank you.

11 MR. EDENFIELD: Ms. Cox is tendered for
12 cross-examination.

13 CHAIRMAN DEASON: Mr. Melson.

14 CROSS EXAMINATION

15 BY MR. MELSON:

16 Q Ms. Cox, I'm Rick Melson representing WorldCom.
17 A couple of questions on your summary. You indicated that
18 the Illinois court ruling held that WorldCom had not
19 proved comparable geographic scope; was that correct?

20 A Yes.

21 Q Have you reviewed the record that was made
22 before the Illinois Commerce Commission to know what proof
23 was put on in that case?

24 A I have not reviewed the Illinois Commission
25 record. My recollection of the court discussion was that

1 the representation was made that they served some number
2 of customers, and the Court found that that was not
3 sufficient to demonstrate geographic coverage, the number
4 of customers.

5 Q But you don't know in detail what was in that
6 Illinois record?

7 A No, I have not reviewed the Illinois Commission
8 record.

9 Q Okay. You also said, if I understood you
10 correctly, that the current agreement would permit
11 WorldCom to collect the tandem rate if it performed the
12 tandem switching function. Does that mean that if -- does
13 that mean that you are conceding that the geographic
14 coverage is the same? Because I thought your position was
15 that you had to prove both functionality and geographic
16 coverage.

17 A And that is our position. My only point is, the
18 language that is in the interconnection agreement mentions
19 function specifically and says, you know, you will not
20 collect the tandem switching function unless you provide
21 that function. So my point is, in the context of the
22 language, which I think is what you're taking issue with,
23 is that that requirement is somehow unlawful based on the
24 reinstatement of the rule that that doesn't prevent you
25 from collecting the tandem switching function, the rate if

1 you're providing that function. So, no, I'm not conceding
2 that it's one or the other or that you have demonstrated
3 geographic comparability.

4 Q Let me talk to you just a minute about a
5 situation which you believe the FCC rule would require
6 compensation of the tandem rate. If WorldCom used a
7 tandem and end office switching architecture but served a
8 smaller geographical area and was served by BellSouth's
9 tandem, would WorldCom be entitled to receive the tandem
10 rate?

11 A No. It's, I believe, a two-prong test. The
12 FCC's rule specifically mentions providing the same
13 service, and then mentions the geographic coverage. So I
14 believe it is a two-prong test.

15 Q And if WorldCom had a single switch in a given
16 geographic area, does that automatically preclude them
17 from recovering the tandem rate?

18 A Well, I don't see how a single switch could be
19 providing the tandem function. So, yes, I believe that
20 would preclude them.

21 Q So is there any way, in your view, for WorldCom
22 to receive the tandem rate other than to essentially
23 replicate BellSouth's network architecture which has a
24 tandem subtended by some number of end offices and the
25 collection of that architecture serving a geographic area

1 at least as large as BellSouth serves?

2 A I believe it was in Paragraph 1090, the FCC
3 referenced that a state could consider new technologies.
4 Now, what I don't believe is that they were anticipating
5 the types of things where -- I mean, I think I heard you
6 talking about some transport functions that would really
7 be at the end office and saying that that is -- translates
8 to a tandem functionality. I don't believe that's what
9 they are talking about. I think there is room in the
10 interpretation for a state commission to hear that there
11 could be -- the tandem functionality being done in a way
12 maybe different than BellSouth is doing it, but I don't
13 think it's in the way you have been discussing.

14 Q Let me ask this. What do you mean when you say
15 tandem functionality?

16 A I mean very much as the Commission discussed in
17 the Intermedia case, and that is trunk-to-trunk
18 connections. It's bringing traffic together from one
19 switch and taking it to another switch.

20 Q And explain to the Commission -- if that is
21 indeed the controlling definition, explain to the
22 Commission how that could be done without a separate
23 tandem switch.

24 A Well, what I was saying is there could be new
25 technologies. I don't know what you would call them, and

1 it's hard for me to anticipate what could come in the
2 future. I'm just saying there was language in the FCC's
3 order to allow for that. What I don't think it allows
4 for, though, is a function that -- we could be doing the
5 same kind of thing at our end office, which is, we might
6 have a SONET ring going off of an end office, or clearly,
7 we are getting calls from the end office to a customer
8 routing those calls, but we wouldn't collect the tandem
9 rate for that. We would collect the end office rate for
10 that.

11 Q So as you sit here today, you cannot think of
12 any current network architecture that exists that would
13 qualify WorldCom for the tandem rate other than a
14 traditional trunk-to-trunk tandem switch; is that correct?

15 A Well, I'm not purporting to be a network
16 architecture expert, so I probably can't describe one.
17 I'm not saying there's not one out there, but I haven't
18 heard one discussed today that I believe we would meet
19 that criteria.

20 Q Have you ever heard one discussed that you think
21 would meet that criteria?

22 A Not that I can recall.

23 Q Ms. Cox, what I have just handed you is an
24 excerpt from the FCC's First Report and Order in the local
25 competition docket. I believe the last page of it has the

1 Paragraph 1090 that there's been a lot of discussion about
2 today. First, would you agree with me that in order to
3 understand Paragraph 1090, it would be appropriate to read
4 the discussion in Paragraphs 1085 through 1090 that
5 precede, or I'm sorry, 1085 through 1089 that precede that
6 paragraph?

7 A And possibly more, but, yes.

8 Q All right. In Paragraph 1090, I'd like you to
9 focus on the third sentence, which I think is the one
10 we've been sort of indirectly talking about. In fact, let
11 me begin with the second sentence. "We, therefore,
12 conclude that states may establish transport and
13 termination rates in the arbitration process that vary
14 according to whether the traffic is routed through a
15 tandem switch or directly to the end office switch." And
16 that's what the Florida Commission did in the original
17 MCImetro/BellSouth arbitration; is that correct?

18 A Yes, that's correct.

19 Q "In such event, states shall also consider
20 whether new technologies (e.g. fiber ring or wireless
21 networks) perform functions similar to those performed by
22 an incumbent LEC's tandem switch." And I guess I am
23 asking -- it's my understanding of your testimony that
24 there is no circumstance under which you believe a fiber
25 ring would perform the type of trunk-to-trunk switching

1 function that you believe is required to constitute tandem
2 switching; is that correct?

3 A Well, no, not really. What I said was, I was
4 here and I heard the discussion of WorldCom's network and
5 how a fiber ring sort of fits into that network. My
6 understanding of that was, the call comes -- for a call,
7 say, coming from a BellSouth customer to a WorldCom
8 customer, it would come to your switch; then get onto some
9 transport or basically loop sort of facilities which get
10 it to the end customer. And what I'm saying is that is
11 nothing different than an end office switch can do. That
12 in and of itself is not tandem functionality.

13 So I don't want to leave the impression that
14 there's nothing out there. I don't know the extent of
15 everything that's out there or everything that's to come.
16 And so I think that's probably why the FCC put this in
17 there, was not to preclude the development of new
18 technologies. My point is, this is not applicable in this
19 case.

20 CHAIRMAN DEASON: Let me ask a question. I
21 guess kind of from just a general policy perspective, if
22 BellSouth's network is configured such that its customer
23 can make a call and it be completed on WorldCom's network
24 and a WorldCom customer can initiate a call and have it
25 completed on BellSouth's network, what difference does it

1 make whether tandem switching is involved on either end as
2 long as the call can be completed? And why should the
3 rate be based on whether tandem switching is used or not
4 as long as the call is completed?

5 THE WITNESS: Well, the FCC recognized that the
6 cost for terminating a call is likely to be different if a
7 tandem switch is used or not. And so the premise --

8 CHAIRMAN DEASON: Let me interrupt you just a
9 second. So you're saying that the rate that you charge
10 WorldCom for completing its customer's call should be
11 based upon your cost, is that correct, your cost of
12 completing that call?

13 THE WITNESS: Yes, and it is.

14 CHAIRMAN DEASON: Okay. Then what should
15 WorldCom's rate be based upon for completing a BellSouth
16 customer's call to someone on this network?

17 THE WITNESS: Well, absent a showing which I
18 believe there is room for a showing by the competing
19 carrier about their own cost, but absent that, the policy
20 has been that the rates will be symmetrical for the same
21 services that are provided.

22 CHAIRMAN DEASON: Is the service that the
23 WorldCom customer is seeking, is it to have a call
24 completed, or is it to have a call completed via a tandem?

25 THE WITNESS: The service really that we're

1 talking about is the transport and termination of local
2 calls. It's not so much a service we're providing to
3 WorldCom's end user, that would be indirectly, but the
4 service more directly is to WorldCom.

5 CHAIRMAN DEASON: All right. Let's back it up
6 then. Why is WorldCom concerned? As long as their
7 customer's call gets completed, why are they concerned
8 whether you do it through a tandem or some other more
9 efficient method? And if you choose to do it under a less
10 efficient method, why should they have to pay more?

11 THE WITNESS: Well, I don't think -- a tandem is
12 not necessarily less effective or efficient. In fact, a
13 lot of times, it's more efficient. It's done in lieu of
14 trunking costs and those kinds of things and transport
15 costs which would also be incurred for terminating and
16 transporting calls. It is important to note that we don't
17 charge the tandem rate on every call that we terminate for
18 WorldCom. It would only be if it goes through the tandem.

19 If it comes directly to an end office and then
20 is routed on to the customer, as they discussed that's
21 done on their end, we would only charge the end office
22 rate. All we're asking is that when a call is going in
23 the other direction that we not be required to pay the
24 tandem rate regardless of whether or not a tandem function
25 is being provided.

1 CHAIRMAN DEASON: But there's a certain
2 percentage of the calls that go through a tandem. Do you
3 know what that percentage is?

4 THE WITNESS: I do not know that. I'm sorry.

5 CHAIRMAN DEASON: But the result is, if they are
6 not using tandem switching, the rate that you pay them for
7 completing your calls is higher than the -- I'm sorry.
8 The rate you receive for completing their calls is higher
9 than the rate you have to pay them for completing your
10 calls; correct?

11 THE WITNESS: Not necessarily. If we're
12 completing their calls directly to an end office, it's the
13 same.

14 CHAIRMAN DEASON: No, I understand that, but
15 there's going to be some percentage, and you can't tell me
16 whether it's 90/10 or 10/90 or 50/50.

17 THE WITNESS: Yeah, I can't. I'm sorry.

18 CHAIRMAN DEASON: There is some percentage that
19 are going to go through a tandem, and there's some
20 percentage that's going to go through an end office. Just
21 for the sake of argument, if it's 50/50, well, then on
22 average, you're going to have -- your revenue is going to
23 be higher than their revenue assuming that they do not use
24 tandem switching at all in the architecture.

25 THE WITNESS: And that would be reflecting our

1 higher costs.

2 CHAIRMAN DEASON: Okay. Well, why in a
3 competitive market should you get higher revenue because
4 your costs are higher? Shouldn't it be based upon
5 whatever should be the rate established by the market?
6 And that by definition should be the most efficient way of
7 providing that on a going-forward basis.

8 THE WITNESS: Well, in providing unbundled
9 network elements, we're required to offer those elements
10 at cost. Those are then the rates that we also charge for
11 reciprocal compensation. So they are directly based on
12 our cost, and I think it is entirely inappropriate in a
13 competitive environment that when we're providing a
14 service to a competitor that we be compensated for our
15 cost and vice versa for them.

16 BY MR. MELSON:

17 Q Ms. Cox, let me follow up on that just a minute.
18 It's correct, is it not, that the local competition order
19 and the FCC rules permit an ILEC to establish a tandem
20 switching rate in the event it performs a tandem switching
21 function?

22 A Yes, that's correct.

23 Q And isn't it also correct that the FCC's
24 First Report and Order and the rules do not require an
25 ALEC to produce a cost study unless it wishes to receive a

1 rate higher than the rate the incumbent establishes on its
2 cost studies?

3 A Yes, that's correct.

4 Q So essentially, is it fair to say that the FCC
5 established a scheme under which the ILEC cost studies
6 establish the presumptive symmetrical compensation rate
7 that is then available to and charged by all ALECs?

8 A Yes, I would agree with that. And that's how it
9 works. For the end office rate, there's a symmetrical
10 rate. For the tandem switching rate, there is a
11 symmetrical rate.

12 Q Now, turn, if you would, please, to Paragraph
13 1090 to the last sentence, and let me ask you, doesn't
14 that sentence say unambiguously that where there is
15 geographic comparability, the appropriate proxy for the
16 interconnecting carrier's additional costs is the LEC
17 tandem interconnection rate?

18 A Well, it says that subject to everything else in
19 the paragraph which talks about the cost differing whether
20 or not a tandem is involved, you know, that states have
21 the right to establish separate rates based on whether a
22 tandem is used. So, I mean, you work your way through it,
23 so to say that -- it does not unambiguously say that that
24 is the only requirement, I do not believe.

25 Q Sure. The sentence before it says that if a

1 Commission finds that an ALEC performs a similar function
2 with a new technology, it may be entitled to receive the
3 tandem rate without regard to geographic coverage.

4 A Yes, it does say that. And my understanding is,
5 the Commission looked at the issue of functionality when
6 this agreement that we're discussing right now was being
7 addressed and addressed whether or not the functionality
8 was being met. Now, nothing about anything that happened
9 since then has made that determination unlawful is our
10 point. We don't need to relook at the language in the Act
11 because the Commission looked at functionality.

12 Q Well, let me ask you, because we've discussed
13 quite a number of orders this morning. First, would you
14 agree with me that the interconnection agreement whose
15 language is controlling is the MCImetro/BellSouth
16 interconnection agreement?

17 A That's my understanding, yes.

18 Q And that's because when the MFS interconnection
19 agreement expired, MFS opted into the MCImetro agreement;
20 is that correct?

21 A I'm not certain of that. I'll accept that
22 subject to check.

23 Q And just to be clear, the MCImetro/BellSouth
24 interconnection agreement that we're dealing with is a
25 Florida-specific agreement, is it not?

1 A I'm not certain about that only because of some
2 language in -- I believe it was the letter it to
3 Mr. Finlen that referenced some other states as having the
4 same concern.

5 Q Let me show you a copy of the MCImetro/BellSouth
6 interconnection agreement, and ask you if that appears to
7 be a Florida-only agreement?

8 A It does say "Florida Interconnection Agreement"
9 on the top of the page there, so perhaps it is.

10 Q Now, when we look back to 1996 at the
11 proceedings surrounding the arbitration of the
12 MCImetro/BellSouth interconnection agreement, isn't it
13 correct that the issue of the specific geographic scope
14 covered by any of the MCImetro local switches was not as a
15 matter of fact litigated in those dockets?

16 A That's my understanding.

17 Q And so the Commission -- while the Commission in
18 the order said they were rejecting geographic
19 comparability as the sole test, there was no factual
20 finding, to your knowledge, about whether the switch
21 provided comparable geographic coverage or not?

22 A Not to my knowledge. The only finding was as to
23 the issue of not providing functionality.

24 MR. MELSON: That's all I've got. Thank you,
25 Ms. Cox.

1 THE WITNESS: Thank you.

2 CHAIRMAN DEASON: Staff?

3 MR. VACCARO: Staff has no questions.

4 CHAIRMAN DEASON: Commissioners? I have a
5 question. Here again, from kind of a broader policy
6 perspective, what would be wrong with the proposition that
7 whatever your blended determination rate is; that is,
8 taking into consideration the percentage that is
9 terminated through an end office and the percentage that
10 is terminated through a tandem, whatever that blended rate
11 is that you pay the same thing to WorldCom for terminating
12 your customers' calls for that same geographic area?

13 THE WITNESS: Well, I would say that still
14 really wouldn't comport with the FCC's rule.

15 CHAIRMAN DEASON: I'm not --

16 THE WITNESS: Okay, sorry.

17 CHAIRMAN DEASON: Let's forget about the FCC.
18 This is a broader policy question. What's wrong with
19 that? What's unfair?

20 THE WITNESS: Well, from our perspective, we
21 would still be paying costs on perhaps not all calls but
22 on some percentage of calls that really weren't being
23 incurred --

24 CHAIRMAN DEASON: Well, we don't know exactly
25 what all architecture or what all mechanisms or technology

1 or whatever, whatever the way they choose to do it, as
2 long as your customers' calls get completed to a customer
3 that is on the WorldCom network, what difference does it
4 make?

5 THE WITNESS: Well, that's certainly something
6 the Commission can consider. I mean, that would not be
7 our preference, obviously, and you would certainly be
8 within your power to consider something like that.

9 CHAIRMAN DEASON: Isn't it fair that if you
10 terminate their customers' calls on your network and you
11 get paid "X" and you pay them "X" for terminating your
12 customers' calls on their network, isn't that fair?

13 THE WITNESS: Well, it might seem so, but, you
14 know, without knowing the underlying costs of really
15 what's being incurred, it's hard to say whether it really
16 is or not.

17 CHAIRMAN DEASON: If we are going to get to a
18 competitive model, don't at some point we need to kind of
19 forget about costs and just let people design their
20 networks as to what's the most efficient for them, and if
21 they can do it better at "X" rate, they make more money?
22 Isn't that what competition is all about?

23 THE WITNESS: Well, I don't know that I --
24 competition is clearly about efficient companies being
25 able to make a good return, no doubt. I'm not sure that

1 it's meant to be in a way that we would be compensating
2 our competitor in a way that's greater than the costs they
3 are incurring. I mean, theirs weren't -- my understanding
4 of reciprocal compensation was it was to clearly just
5 recover the cost that perhaps we would have incurred, you
6 know, before competitive environment for completing these
7 calls to our own customers. It's not really to be sort of
8 a revenue stream for competitive companies for us or for
9 them.

10 CHAIRMAN DEASON: Well, as long as you recover
11 your cost, what's the problem? You just don't want to pay
12 them more than what their cost is?

13 THE WITNESS: Well, we don't want to pay them
14 for functions they are not providing.

15 CHAIRMAN DEASON: Well, they are providing you
16 the function. They are completing the call; correct?
17 Isn't that what is in the interest of the customer? As
18 long as their call is completed, isn't that what counts?

19 THE WITNESS: That is clearly in the interest of
20 the customers, that the calls get completed, and by all
21 means, the calls will get completed. It's just that on
22 our side, we recover a certain amount if it goes to the
23 end office and a certain amount if it goes to the tandem.
24 Now, if some sort of a blended rate was to reflect the
25 actual time and percentage that ours do that, even if we

1 can determine that, I don't know that that's a steady mix
2 or if it's a fluctuating mix. You know, I don't even know
3 that. So I mean, there, I think, are other things
4 probably to consider if you're going to look at that kind
5 of policy.

6 CHAIRMAN DEASON: Let me come up with an absurd
7 example if you think cost is -- what if there is an
8 incumbent that comes out, not an incumbent, a competitor
9 comes out and the way they complete their calls is that
10 the calls come to some central location, and they put
11 somebody on a bicycle and carries a handwritten message to
12 somebody's door and says, here's your telephone message.
13 Now, that's absurd. But it's probably going to cost about
14 five or ten dollars per call to complete it depending on
15 the distance that somebody has got to bicycle. If that's
16 their cost, why should you -- you wouldn't want to pay
17 that cost, would you?

18 THE WITNESS: No, I don't think I would want to
19 pay that cost.

20 CHAIRMAN DEASON: Well, why would they want to
21 pay your cost and not be --

22 THE WITNESS: I don't want to leave the
23 impression that our costs are not efficient; what we're
24 doing is clearly efficient. The whole pricing rules for
25 developing the prices of UNEs are based on the idea of

1 forward-looking cost, and that it is an efficient way to
2 design a network. I don't know what the cost would be if
3 we didn't have tandems, for example. I mean, it could be
4 higher costs and probably would be. So I just -- it just
5 doesn't seem fair in a competitive environment to pay your
6 competitor for a function they're not really providing for
7 you, per se. I understand the call is getting completed.

8 CHAIRMAN DEASON: They could come in here and
9 say, well, we complete our calls by putting somebody on a
10 bicycle, and they don't -- BellSouth doesn't do that, but
11 we want to get paid because that's what our cost is. I
12 mean, I'm sure that's just a really absurd example.

13 At some point it seems to me that there needs to
14 be what is considered to be a fair rate, and if it has to
15 be based upon the incumbent's cost, so be it, but if
16 somebody can come in and compete with you and they can
17 make a profit at what your cost rate is, and if they can
18 make a huge profit, so be it, why is it that you're
19 offended that you have to pay them -- that you have to pay
20 them the same revenue that you're getting just because so
21 long as -- because they're not doing the -- completing
22 that call using the same technology and the same
23 architecture that you are?

24 THE WITNESS: Well, I don't want to sound like a
25 broken record. I apologize, but the premise of the

1 reciprocal compensation, again, it all comes from cost. I
2 mean, our rates, it all stems from cost. And there was a
3 recognition that there is a different cost if you use a
4 tandem and if you use an end office. And it just seems
5 that that difference should also carry over on a
6 symmetrical basis for what we're paying, not for just what
7 we're charging for reciprocal compensation.

8 CHAIRMAN DEASON: But if we follow that to a
9 logical conclusion, then aren't we giving a wrong pricing
10 incentive to incumbents to come in and use tandem
11 architecture where it may not be the best efficient way
12 for them to complete calls that your customers initiate?

13 THE WITNESS: No, I don't think so at all. I
14 mean, our -- it's completely within our own self-interest
15 to design the most efficient network possible. There's so
16 much more to running our network and providing our
17 services than really this reciprocal compensation. I
18 mean, that's not going to be what's really going to drive
19 our behavior. Our incentive is clearly to have an
20 efficient network, and that's what has led to tandem
21 switching in our network.

22 CHAIRMAN DEASON: Okay. And I'm not -- don't
23 worry, I'm not suggesting that the architecture you have
24 employed is inefficient, and it may be the best way for
25 you to provide service to your customers. In fact, I'm

1 confident that given the history and everything that it
2 was probably engineered that way for very specific
3 reasons, and that's the way it is. But if we design our
4 compensation to new entrants such that they only get this
5 incremental piece of revenue that they have to pay you if
6 they actually design their system to employ tandem
7 switching, doesn't that kind of send the wrong price
8 signal that, you know, you have an option, you can do
9 it -- you can design your system using technology and
10 infrastructure and architecture that is the most efficient
11 for you, but your revenue stream may be less, or you can
12 maybe make it a little less efficient but put tandem
13 switching in there somewhere and your revenue streams are
14 going to be higher, isn't that the type thing that we are
15 supposed to get away from when we start introducing
16 competition?

17 THE WITNESS: Well, clearly your role as public
18 policy is to get the most efficient competition out there.
19 I don't think the presence of tandem switching or not --
20 and we're not saying they will never get tandem switching.
21 If they are entitled to it, we're willing to pay. So I
22 don't think that that in and of itself is creating any
23 sort of an uneconomic incentive for new entrants or
24 incumbents. Clearly, the Commission is certainly within
25 their prerogative to revisit or to look at this idea that

1 you discussed as a blended rate. I would just encourage
2 you to -- you know, I'm sure there's probably more
3 feedback and more response if you heard from all parties
4 as to what that might entail or ramifications of that
5 before you would make that decision in this case.

6 COMMISSIONER JABER: Reciprocal compensation, in
7 your opinion, wasn't designed to allow companies to make
8 money or to have an additional revenue stream. In your
9 opinion, it was a cost recovery mechanism.

10 THE WITNESS: Yes, that's my belief.

11 COMMISSIONER JABER: And is that because the Act
12 recognized that BellSouth or any incumbent LEC, for that
13 matter, had to open up its system to allow competitors to
14 use it, and in doing so, the incumbents had to be
15 compensated for the cost of opening up or allowing access
16 to their system?

17 THE WITNESS: Well, what I would say is, it
18 recognizes the need for carriers to interconnect, and so
19 there were going to be cases where prior to competition,
20 our customer would call our customer, and that was all
21 within our network and we incurred those costs and we
22 recovered those costs. Once you start getting
23 interconnecting carriers, our customer might call a
24 WorldCom customer. Well, in effect, WorldCom is providing
25 that service to us, and likewise, a WorldCom customer will

1 call our customer. We are now providing that service to
2 WorldCom to complete the calls. So it's that -- the FCC
3 refers to it as transport and termination. So reciprocal
4 compensation was designed to recover that service, if you
5 will, of terminating that call from a customer of another
6 carrier.

7 COMMISSIONER JABER: Okay. Then if I understand
8 your testimony in response to Chairman Deason's questions,
9 you don't think there is an incentive factor or a reverse
10 price signal because the whole mechanism, reciprocal
11 compensation, wasn't designed to send any sort of signals
12 with respect to competition. It was only designed to
13 compensate costs associated with providing a service.

14 THE WITNESS: Yes, I believe that's correct. I
15 don't believe it was designed to result in a revenue
16 stream, if you will, or a windfall.

17 COMMISSIONER JABER: So taking that one step
18 further then, if a competitor does complete that service
19 with functions, mechanisms that are not like the incumbent
20 and that results in a greater cost to the competitor,
21 BellSouth can't argue about paying those costs.

22 THE WITNESS: Well, what would happen then is
23 the competitive carrier would come in and make a
24 demonstration that their network architecture is efficient
25 and that their costs are higher than ours. So it would

1 not be --

2 COMMISSIONER JABER: Where is that?

3 THE WITNESS: That's in the FCC's First Report
4 and Order that there is that process, if you will. So it
5 would not be that they would send us a bill and say, you
6 know, here's our cost; it's higher. There has to be a
7 showing made that their costs are higher. Their costs can
8 be lower for end office switching even than our cost, and
9 we will pay the end office switching rate.

10 COMMISSIONER JABER: But assuming that they can
11 make a demonstration that their costs are higher but the
12 function and the service have been complete, then using
13 your testimony and your theory, BellSouth wouldn't have a
14 problem paying those costs to the competitor, in this case
15 WorldCom.

16 THE WITNESS: It's my understanding, if they
17 make that demonstration, we would probably argue, you
18 know, as to whether or not they were making that
19 demonstration, but if the Commission ruled that, in fact,
20 their costs are higher, then that's what we would be
21 obligated to pay, but that would require a finding.

22 CHAIRMAN DEASON: Any questions? Redirect.

23 MR. EDENFIELD: Just a couple, a real couple
24 this time.

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REDIRECT EXAMINATION

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BY MR. EDENFIELD:

Q Kind of following up on what Commissioner Jaber was asking you. If MCI believes or WorldCom believes that its end office switch is performing functions beyond a traditional end office switch, what are their options for getting compensated for that?

A I hate to ask my own lawyer for clarification. Well, they could come in and make some sort of a demonstration, as I mentioned, that their costs are not reflective of our end office switching costs, would be an option to them.

Q To your knowledge, has WorldCom ever come to the Commission asking this Commission to determine that they have higher costs for the function they are performing?

A Not to my knowledge.

COMMISSIONER JACOBS: I do have a question, I'm sorry. This phrase -- and that's an interesting point because one of the premises of this paragraph, and I would ask your view of it is, are we to exactly go with the cost, or is this an attempt to impute -- Paragraph 1090 is what I'm speaking about -- is this a statement of an intent to impute a cost, this last sentence in Paragraph 1090?

THE WITNESS: Well, I think what the last

1 paragraph is doing and really the whole paragraph to a
2 certain extent is saying that there are going to be rules
3 for the incumbent's costs, and we're going to look at the
4 incumbent's costs for doing these things. What we're
5 going to assume I guess for lack of a better word about
6 the competitive carrier's costs is that if they are
7 providing the function serving a comparable geographic
8 area, we're going to assume that their costs are basically
9 the same as the incumbent's costs absent a showing by the
10 competing carrier to the contrary.

11 COMMISSIONER JACOBS: Thank you.

12 BY MR. EDENFIELD:

13 Q Ms. Cox, in the event that BellSouth terminates
14 a call from a WorldCom customer and we use both the tandem
15 switching and end office switching to complete that call
16 for them, what do we bill them for?

17 A We would bill them one end office switching rate
18 and one tandem switching rate.

19 Q And how was that rate determined?

20 A It was established by the Commission.

21 Q In what kind of proceeding?

22 A An arbitration proceeding, I believe.

23 Q Is that the kind of prices that will be set in
24 the generic UNE docket?

25 A Yes, they would be likely considered there as

1 well.

2 COMMISSIONER JABER: And were those rates based
3 on cost, calculated based on cost?

4 THE WITNESS: Yes, that's my understanding.
5 They would have been calculated based on cost.

6 COMMISSIONER JABER: And there was no margin
7 built in or anything incremental added to that cost factor
8 that you know of?

9 THE WITNESS: Not that I'm aware of.

10 BY MR. EDENFIELD:

11 Q Now, this gets back to the fairness question.
12 If we are billing WorldCom at what our costs have been
13 determined to be with no additive, is it fair for WorldCom
14 to bill us at a rate other than what their actual costs
15 are?

16 A Well, they haven't had to make a demonstration
17 of their cost. They are basically billing us based on our
18 cost. It would not be fair for them to bill us for
19 functions based on our cost for a function if they're not
20 providing the same function.

21 Q If the Commission were to tell WorldCom in that
22 instance that they could only bill or only recover their
23 actual cost, what affect would that have on a CLEC's
24 building of a network if they are only entitled to recover
25 their actual cost, not a market-based rate with markup?

1 A I really don't know how to answer that. They
2 probably would have a better answer to that than I would.

3 MR. EDENFIELD: Okay. I've got nothing else.
4 Thanks.

5 CHAIRMAN DEASON: Okay. Exhibits.

6 MR. EDENFIELD: We would ask that Exhibit 7 be
7 admitted into the record.

8 CHAIRMAN DEASON: Without objection,
9 Exhibit 7 is admitted.

10 (Exhibit 7 admitted into the record.)

11 CHAIRMAN DEASON: Thank you, Ms. Cox.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MR. EDENFIELD: BellSouth has no further
15 witnesses.

16 CHAIRMAN DEASON: Okay. Staff, any final
17 matters before we conclude?

18 MR. VACCARO: Just to let the parties know that
19 the transcripts will be ready on September 13th, and
20 briefs are due on September 27th.

21 CHAIRMAN DEASON: Okay.

22 MR. EDENFIELD: If I might, Commissioner Deason,
23 since the briefs are due on the 27th, as most everyone
24 knows, the week of the 18th or 19th through the 22nd, we
25 will be in the UNE docket and pretty much monopolized for

1 the next two weeks getting ready for that and then
2 actually trying the case, would it be too much of an
3 imposition to ask for the briefing date be moved out one
4 week?

5 CHAIRMAN DEASON: Staff?

6 MR. VACCARO: I don't think that there's a
7 problem with moving the briefing date out. I just ask the
8 parties to keep in mind that that might necessitate a
9 change in the recommendation date. If the parties don't
10 have a problem with that, I don't see that there is a
11 problem. There is no statutory deadline on this case.

12 CHAIRMAN DEASON: Mr. Melson.

13 MR. MELSON: So long as there is no more than a
14 one agenda slip, we would support BellSouth. I think we
15 would like to have the extra week as well.

16 CHAIRMAN DEASON: When is it currently scheduled
17 to go to agenda?

18 MR. VACCARO: It's currently scheduled to go to
19 agenda on November 7th, and then there is one other agenda
20 that month on November 21st.

21 CHAIRMAN DEASON: I'm showing the 28th.

22 MR. VACCARO: I'm sorry, I meant to say the
23 28th.

24 CHAIRMAN DEASON: So that could result in a
25 three-week slippage because that's just the way the

1 agendas fall for the month of November.

2 MR. MELSON: Commissioner, based on the
3 stipulation that we know when we win what the effective
4 date is, we're willing to wait three more weeks to win.

5 MR. EDENFIELD: Your confidence is admirable.

6 CHAIRMAN DEASON: So then the briefing date is
7 going to be moved one week, and then if Staff needs the
8 additional time, then instead of being on the November 7th
9 agenda, it may be November the 28th agenda.

10 MR. EDENFIELD: Thank you.

11 MR. MELSON: Thank you.

12 CHAIRMAN DEASON: Anything else? Hearing
13 nothing, this hearing is adjourned. Thank you all.

14 (Hearing concluded at 2:40 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

I, TRICIA DeMARTE, Official FPSC Commission Reporter,
5 do hereby certify that the Hearing in Docket No. 991755-TP
was heard by the Florida Public Service Commission at the
6 time and place herein stated.

7

It is further certified that I stenographically
8 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
9 transcript, consisting of 206 pages, constitutes a true
transcription of my notes of said proceedings.

10

I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
12 counsel connected with the action, nor am I financially
interested in the action.

13

DATED this 13th day of September, 2000.

14

15

Tricia DeMarte

TRICIA DeMARTE
16 FPSC Official Commission Reporter
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