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BEFORE THE FLORIDA PUBLIC SERVICE

COMMISSION

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In re: Request for arbitration   DOCKET NO.  991755-TP
concerning complaint of MCImetro ORDER NO. PSC-00-2471-FOF-TP
Access Transmission Services LLC ISSUED: December 21, 2000
and MCI WorldCom Communications,
Inc.  against BellSouth
Telecommunications, Inc.  for
breach of approved
interconnection agreement.
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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

APPEARANCES:

Richard D. Melson, Esquire, Hopping Green Sams and Smith, Post Office Box 6526, Tallahassee, Florida 32314
On behalf of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.

E. Earl Edenfield, Esquire, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301
On behalf of BellSouth Telecommunications, Inc.

Tim Vaccaro, Esquire, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

FINAL ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

I. CASE BACKGROUND

On November 23, 1999, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (MCIm and MWC, respectively, or jointly referred to as WorldCom) filed a complaint for arbitration regarding interconnection agreements with BellSouth Telecommunications, Inc. (BellSouth).

An administrative hearing was held on September 6, 2000. At the hearing the parties indicated that Issue 4 had been stipulated. That issue addressed whether WorldCom was entitled to a credit from BellSouth equal to the per minute amount of the tandem interconnection rate dating back to January 25, 1999. The parties agreed that if this Commission were to determine that payment was due to WorldCom in this proceeding, such payment would be retroactive to July 8, 1999. This Order sets forth our decisions on the remaining issues.

II. JURISDICTION

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived at through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the state commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Section 252(c)(1) of the Act states that in resolving arbitrations, state commissions shall ensure that resolution and conditions meet the requirements of Section 251, including regulations prescribed by the Federal Communications Commission (FCC) pursuant to Section 251.

Pursuant to the Act, we established rates and terms for reciprocal compensation for end office and tandem switching for MCI and BellSouth by Order No. PSC-97-0309-FOF-TP, issued March 21, 1997 in Docket No. 960833-TP. The resulting agreement was also adopted by MWC, and approved by us on September 20, 1999. Pursuant to Section 252(c)(1) of the Act, it was incumbent upon us to ensure that the parties' interconnection agreement complied with Section 251 and the rules implementing that section, which it did. At that time, the FCC's pricing rules, including 47 C.F.R. Section 51.711 (Rule 51.711), had been stayed by the Eight Circuit Court of Appeals in Iowa Utilities Bd. v. Federal Communications Commission, 109 F.3d 418 (8th Cir. 1996). The Eight Circuit vacated the pricing rules on July 18, 1997. Iowa Utilities Bd. v. Federal Communications Commission, 120 F.3d 753 (8th Cir. 1997). The U.S. Supreme Court reversed the Eight Circuit's decision in AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999). On remand, Rule 51.711 was reinstated by the Eight Circuit in Iowa Utils. Bd. V. Federal Communications Commission, No. 96-3321 (8th Cir. June 10, 1999).

State commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act. Iowa Utils. Bd. v. Federal Communications Commission, 120 F. 3d 753, 804 (8th Cir. 1997). MCI and MCW have petitioned us to review the agreement we approved to determine if that agreement is in compliance with Rule 51.711. Based on

Iowa Utils. Bd. and Section 252(c)(1), we have the authority to review MCI's and MCW's complaint.

III. COMPENSATION AT TANDEM AND END OFFICE

INTERCONNECTION RATES

The issue before us is to determine if, under FCC Rule 51.711, MCIm and MWC are entitled to be compensated at the sum of the tandem interconnection rate and the end office interconnection rate for calls terminated on their switches, if those switches serve a geographic area comparable to the area served by BellSouth's tandem switches. This issue really focuses, however, on the question of the tandem interconnection rate, which we also refer to as the tandem switching rate.

A. Analysis

WorldCom witness Argenbright asserts that when an ALEC's switch serves a comparable geographic area to that served by the ILEC's tandem switch, "the ALEC ***automatically*** is entitled to receive the tandem interconnection rate in addition to the end office interconnection rate." (emphasis in original) BellSouth witness Cox contends, however, that BellSouth should not be required to pay the end office interconnection rate plus the tandem rate for every local call WorldCom terminates, regardless of which elements are actually used to terminate the call, as WorldCom proposes. Arguing that WorldCom should be compensated for only those functions WorldCom actually performs, witness Cox contends that if WorldCom's switch "is not used to provide a tandem function during a specific call, it is not appropriate to pay reciprocal compensation for the tandem switching function."

The crux of this issue lies in the appropriate interpretation and application of Rule 51.711, and the related discussion in ¶1090 of the FCC's First Report and Order in CC Docket No. 96-98 (FCC 96-325). Rule 51.711 and ¶1090 of FCC 96-325 both deal specifically with setting symmetrical rates for reciprocal compensation. Rule 51.711 reads in part:

> (a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.
>
> (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.
>
> (2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.
>
> (3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

Paragraph 1090 of FCC 96-325 reads:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on

> whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

BellSouth witness Cox contends that in ¶1090, the FCC identified two requirements that an ALEC must satisfy in order to be compensated at the tandem rate: (1) the ALEC's switch must perform functions similar to those performed by BellSouth's tandem switch; and (2) the ALEC's switch must serve a geographic area comparable to the area served by BellSouth's tandem switch. Witness Cox refers to this as the "two-prong test" for receiving the tandem switching rate.

WorldCom witness Argenbright contests this interpretation, arguing that the FCC reached three conclusions in ¶1090. First, it is appropriate for ILECs to receive an additional rate for transport and termination of traffic through a tandem switch. Second, states may consider whether all or some calls terminated by an ALEC may be priced at the tandem rate if the ALEC uses alternative technologies or architectures to perform functions similar to those performed by the ILEC's tandem switch. Third, the tandem rate must be applied when the ALEC's switch serves a geographic area comparable to that served by the ILEC's tandem switch. Witness Argenbright states:

> It is clear that the Local Competition Order [FCC 96-325] did not create a two-pronged, tandem functionality/geographic comparability test, but rather stated that an ALEC is entitled to the tandem interconnection rate (in addition to the end office interconnection rate) whenever the ALEC's switch serves an area comparable to the area served by an ILEC tandem switch. This reading is confirmed by the FCC Rule 51.711(a)(3), which contains no tandem functionality requirement.

Looking at Rule 51.711(a)(3), witness Argenbright asserts that the FCC could not have been more clear. He contends that the "geographic comparability rule was adopted without exception or qualification." Witness Argenbright states that when this rule is satisfied, no proof of functional comparability is required to receive the tandem rate.

BellSouth witness Cox argues that WorldCom witness Argenbright's contention, that the tandem rate must be applied automatically simply based on the geographic area its switch may serve, is incorrect. She refers back to Rule 51.711(a)(1), which provides that:

> [S]ymmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services. (emphasis added by witness)

Witness Cox argues that while WorldCom downplays this portion of the rule, Rule 51.711(a)(1) fully comports with the FCC's discussion in ¶1090 of FCC 96-325 which, she states, sets forth a "two-prong" test for receiving the tandem rate. She asserts that the "same services" mentioned in Rule 51.711(a)(1) equates to the same functions that the ILEC performs in terminating traffic.

WorldCom witness Argenbright, however, states that an ALEC providing transport and termination services on its network, through a switch which serves a comparable geographic area to the area served by the ILEC's tandem switch, is providing the same services. Witness Argenbright explains:

> The concept of a single, geographic scope test was adopted largely because the FCC recognized that when an ALEC switch covers a geographic area that is comparable to the area covered by an ILEC tandem switch, the ALEC switch is necessarily providing similar functionality.

He further asserts that in the event an ALEC's geographic service area is smaller than that served by the ILEC's tandem, then the ALEC can qualify for the tandem rate if its network performs call aggregation and distribution functions similar to those performed by the ILEC's tandem switch.

Refuting the "either/or" approach to interpreting the FCC's rules as presented by WorldCom, BellSouth witness Cox asserts that "the Commission's [FPSC] past decisions on this issue are consistent with the FCC's 'two-prong' test." She cites the March 14, 1997 decision involving MCI, Order No. PSC-97-0294-FOF-TP in Docket No. 961230-TP, in which this Commission stated:

> We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs 'equivalent functionalities' as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function.

In addition, witness Cox cites Order No. PSC-96-1532-FOF-TP in Docket No. 960838-TP, dated December 16, 1996, in which we stated:

> The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation.

WorldCom witness Argenbright contests BellSouth's citing of the MCI/Sprint and MFS/Sprint Orders, stating that these decisions were both made when the FCC's pricing rules, including Rule 51.711, were stayed. He argues that neither of these Orders has bearing here, because WorldCom is requesting this Commission to make a determination in this docket based on the reinstated FCC pricing rules that were not relied upon in these two previous rulings.

BellSouth witness Cox also refers to our more recent decision in the ICG Telecom Group, Inc./BellSouth Arbitration. She cites Order No. PSC-00-0128-FOF-TP, dated January 14, 2000, in which we decided:

> While FCC Rule 47 C.F.R. Section 51.711 allows us to provide for reciprocal compensation at the tandem rate if the switch of a carrier other than an incumbent LEC serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill this geographic criterion. Similarly, the evidence of record in this arbitration does not show that ICG will deploy both a tandem and end office switch in its network. In addition,

> since tandem switching is described by both parties as performing the function of transferring telecommunications between two trunks as an intermediate switch or connection, we do not believe this function will or can be performed by ICG's single switch.

While witness Cox cites this Order in support of BellSouth's position that this Commission has traditionally held to the "two-prong" test, WorldCom witness Argenbright contends that the ICG Order supports the conclusion that an ALEC showing only geographic coverage is entitled to the tandem rate. He states that "the Commission did not suggest that ICG had to prove both geographic comparability ***and*** tandem functionality." (emphasis in original) WorldCom also asserts in its brief that the first sentence of the quotation above demonstrates that this Commission has recognized that geographic coverage alone is sufficient for recovery of the tandem switching rate. Witness Argenbright asserts that the discussion in this Order was consistent with the principle that an ALEC must prove geographic coverage or tandem functionality in order to receive the tandem rate, but not necessarily both.

Witness Cox contends that it is clear from our prior decisions that WorldCom must satisfy both requirements of the FCC's rule in order to receive compensation for the tandem switching function. Witness Cox states that WorldCom fails to show that it satisfies the geographic area prong of the test and does not allege in the Complaint that it meets the functionality prong.

The parties also rely on certain court opinions under this issue. In its brief, BellSouth cites U.S. West Communications, Inc. V. Minnesota Public Utilities Commission, 55 F. Supp. 2d 968, 978 (D. Minn. 1999). BellSouth asserts that the District Court held that in order to evaluate whether an ALEC should receive the same reciprocal compensation rate as if traffic were being transported and terminated via the ILEC's tandem switch, "it is appropriate to look at both the function and geographic scope of the switch at issue." WorldCom counters that the District Court treated the inquiry as an "either-or" question. Citing page 979 of the District Court's opinion, WorldCom states that the District Court upheld the Minnesota PUC based upon a finding of comparable functionality alone, not geographic comparability. WorldCom adds that the Court also noted that a finding of geographic comparability alone would provide sufficient grounds for the tandem switch rate.

BellSouth witness Cox also cites a decision by the Ninth Circuit Court of Appeals which states that "the [Washington] Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch." U.S. West Communications v. MFS Intelenet, Inc, et. al, 193 F. 3d 1112, 1124 (9th Dist. 1999). WorldCom argues, however, that one cannot tell from the Court's decision whether it was endorsing an "either-or" test or a "two-prong" test. WorldCom states in its brief that, "At most the decision says that it was proper for the [Washington] Commission to consider both questions." WorldCom witness Argenbright states that the Court merely held that the Washington Utilities and Transportation Commission was not arbitrary or capricious when it ruled that MFS was entitled to the tandem interconnection rate, in so doing considering both function and geographic coverage. WorldCom argued in its brief that the Washington Utilities and Transportation Commission applied, and the Ninth Circuit in the MFS case upheld, an end result test under which the completion of a call from widespread remote locations is treated for pricing purposes as the equivalent of what a tandem switch does, even when no traditional trunk-to-trunk switching is involved. Citing the Arbitrator's Report and Decision (November 1996) and Order Approving Negotiated and Arbitrated Interconnection Agreement (January 1997), In the Matter of MFS and US West, Docket No. UT-960323), WorldCom argues in its brief that this reading of the Washington Commission's decision is supported by the fact that "MFS had deployed only a single switch, and therefore could not have performed the trunk-to-trunk switching function which BellSouth claims is required."

Finally, while conceding that this Commission has consistently held that in order to prove tandem functionality an ALEC must show that it performs a traditional trunk-to-trunk tandem switching

function, in its brief WorldCom states that the record in this proceeding provides sound policy reasons for a change in this position. WorldCom states that we should adopt a new policy under which an ALEC can meet the "comparable functionality test" through the use of alternative network architectures that provides the same underlying function. WorldCom suggests that this underlying function would be the aggregation and distribution of traffic from widespread geographic locations.

B. Decision

At the heart of each party's case is the question of whether, pursuant to Rule 51.711 and ¶1090 of FCC 96-325, the FCC has mandated an "either/or" or "two-prong" test to establish recovery of the tandem switching rate. WorldCom witness Argenbright asserts that Rule 51.711(a)(3) states that the tandem rate must be applied when the ALEC's switch serves a geographic area comparable to that served by the ILEC's tandem switch. He argues that when geographic comparability is established, no proof of functional similarity is required. Witness Argenbright contends that an ALEC is entitled to the tandem rate if its switch either performs similar functions, or serves a comparable geographic area to that of the ILEC's tandem. He argues that the lack of any functionality requirement in Rule 51.711(a)(3) confirms this "either/or" interpretation. He argues that ¶1090 of FCC 96-325 supports this interpretation.

On the other hand, BellSouth witness Cox argues that the FCC has established a "two-prong" test for determining if the ALEC is entitled to the tandem rate. Witness Cox refers to the discussion in ¶1090 of FCC 96-325 to support this conclusion, arguing that the FCC states that an ALEC's switch must perform a similar function and cover a comparable geographic area to that of the ILEC's tandem switch. In addition, BellSouth witness Cox points to Rule 51.711(a)(1) in support of the "two-prong" test. She argues that subpart (a)(1) clearly sets forth the fact that symmetrical compensation rates are to be assessed when parties perform the same services.

The parties' diametrically opposed interpretations of Rule 51.711 and ¶1090 of FCC 96-325 indicate to us that the FCC's intent regarding recovery of the tandem switching rate is unclear. We are unable to glean from the evidence presented in this docket whether the FCC has mandated an "either-or" or "two-prong" test to establish recovery of the tandem switching rate. Therefore, we do not reach a determination on which test is applicable. We note, however, that Section 2.4.2 of Part A of the parties' interconnection agreement provides the following:

> 2.4.2 When BellSouth terminates calls to MCIm's subscribers using MCIm's switch, BellSouth shall pay MCIm the appropriate interconnection rates(s). BellSouth shall not compensate MCIm for transport and tandem switching unless MCIm actually performs each function.

We do not find it appropriate to overturn the clear language of this agreement based upon the evidence presented in this proceeding. The language in Section 2.4.2 plainly specifies that WorldCom is not entitled to the tandem switching rate unless WorldCom actually performs that function. It is incumbent upon WorldCom to demonstrate that the reinstatement of Rule 51.711 dictates a change in this language. WorldCom has has not met this burden and, as such, has not demonstrated that it is entitled to recovery of the tandem switching rate under its agreement with BellSouth.

We also find that Orders Nos. PSC-97-0294-FOF-TP and PSC-96-1532-FOF-TP discussed earlier are not applicable to the issue at hand. As witness Argenbright argues, these decisions have no bearing in this proceeding, because we did not consider Rule 51.711 in making our determinations.

We further disagree with BellSouth's and WorldCom's assertions that Order No. PSC-00-0128-FOF-TP

rendered in the ICG Telecom/BellSouth arbitration, supports their respective positions. Witness Cox cites this Order in support of BellSouth's "two-prong" test argument. WorldCom witness Argenbright states that the Order endorses the "either-or" test. WorldCom also asserts that the Order recognizes that geographic coverage alone is sufficient for recovery of the tandem switch rate. We note that the quotation from the Order identified at pages 8 through 9 of this Order merely illustrates that we evaluated both geographic and functional comparability in making our decision. We did not specifically state, however, whether an "either-or" or a "two-prong" test was appropriate. With regard to WorldCom's assertion that the Order recognizes that geographic coverage alone is sufficient for recovery of the tandem switch rate, WorldCom emphasizes the following language from the aforementioned quotation:

> While Rule 47 C.F.R. Section 51.711 allows us to provide for reciprocal compensation at the tandem rate if the switch of a carrier other than an incumbent LEC serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill the geographic criterion.

Although we stated that geographic comparability is a basis for allowing the tandem switch rate under Rule 51.711, we did not set forth whether that criterion alone is sufficient. As discussed above, we also evaluated similar functionality. We have addressed this same issue in the Intermedia/BellSouth Arbitration Order No. PSC-00-1519-FOF-TP, issued in Docket No. 991854-TP. Again we evaluated the geographic and functional comparability but never made a specific finding whether or not both were required for recovery of the tandem switch rate.

We also find that the court decisions cited by the parties are not dispositive of this issue. With regard to U.S. West Communications, Inc. V. Minnesota Public Utilities Commission, it appears that WorldCom's reading of the U.S. District Court of Minnesota's decision is correct. The Court does state that under Rule 51.711 geographic comparability alone is sufficient grounds for application of the tandem switch rate. Nevertheless, the District Court's interpretation of Rule 51.711 is merely illustrative and does not bind our authority to make a decision in this docket.

With regard to the MFS case, we also believe that WorldCom's reading of the Ninth Circuit Court's decision is correct. The Court merely determined that the Washington Commission was not arbitrary or capricious in making its decision. The Court did not, however, make a finding on its own regarding whether a single switch can perform a tandem function. We do not address WorldCom's discussion on this point, because that question is not at issue in this docket. Further, the MFS case is merely illustrative and does not bind the Commission's authority to make a decision in this docket.

Finally, we address WorldCom's argument that we should adopt a new policy under which an ALEC can meet the "comparable functionality test" through the use of alternative network architectures that provide the same underlying function. WorldCom suggests that this underlying function would be the aggregation and distribution of traffic from widespread geographic locations. Again we do not address WorldCom's statements, because the question of whether or not WorldCom's switches perform a tandem function is not at issue in this docket; however, parties are not precluded from raising this policy issue in future proceedings.

Based on the foregoing, we find that WorldCom has not demonstrated that the reinstatement of Rule 51.711 dictates a change in Section 2.4.2 of its interconnection agreement with BellSouth. Therefore, WorldCom has not demonstrated that it is entitled to recovery of the tandem switching rate under its agreement with BellSouth. Therefore, WorldCom's claim for relief is hereby denied.

IV. GEOGRAPHIC COMPARABILITY

The issue before us is to determine whether WorldCom's switches serve geographic areas comparable to those served by a BellSouth tandem switch. Based upon our determination under Section III of this Order, this issue is rendered moot.

V. AMENDMENT OF INTERCONNECTION AGREEMENT

The issue before us is whether BellSouth should be required, pursuant to Part A Section 2.2 or 2.4 of the interconnection agreement, to execute amendments to its interconnection agreements with MCIm and MWC requiring BellSouth to compensate MCIm and MWC at the sum of the tandem interconnection rate and the end office interconnection rate for calls terminated on their switches that serve a geographic area comparable to the area served by BellSouth's tandem switches.

A. Analysis

Section 2.4.2 of Part A of the interconnection agreement provides the following:

> 2.4.2 When BellSouth terminates calls to MCIm's subscribers using MCIm's switch, BellSouth shall pay MCIm the appropriate interconnection rates(s). BellSouth shall not compensate MCIm for transport and tandem switching unless MCIm actually performs each function.

WorldCom witness Argenbright testifies that under this language, WorldCom is precluded from receiving compensation at the tandem interconnection rate unless it actually performs a tandem switching function. Witness Argenbright states that this preclusion has been made unlawful by the reinstatement of Rule 51.711, because WorldCom is now affirmatively entitled by that rule to receive the tandem interconnection rate based solely on the comparable geographic coverage provided by its switches in Florida. Therefore, WorldCom argues that the Commission should order that the interconnection agreement be amended to permit WorldCom to recover the tandem interconnection rate based on the geographic coverage of its switches.

WorldCom asserts that two provisions in the parties' interconnection agreement require that the agreement be amended. Part A, Section 2.2 of the agreement provides in pertinent part:

> In the event the FCC or the State regulatory body promulgates rules or regulations, or issues orders, or a court with appropriate jurisdiction issues orders, which make unlawful any provision of this Agreement, the parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which are consistent with such rules, regulations or orders.

Part A, Section 2.4 of the agreement provides in pertinent part:

> In the event that any final and nonappealable legislative, regulatory, judicial or other legal action materially affects any terms of this Agreement, or the ability of MCIm or BellSouth to perform any material terms of this Agreement, or in the event a judicial or administrative stay of such action is not sought or granted, MCIm or BellSouth may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action became binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually

acceptable new terms as may be required.

The crux of BellSouth witness Cox's testimony is that there are no provisions in the current agreements that are made unlawful by the reinstatement of Rule 51.711. Therefore, BellSouth argues that WorldCom fails to establish a basis upon which the Commission can reform the agreement.

B. Decision

This issue hinges upon our decision under Section III of this Order. Under that section, we determined that WorldCom has not demonstrated that the reinstatement of Rule 51.711 dictates a change in Section 2.4.2 of its interconnection agreement with BellSouth. We therefore determined that WorldCom has not demonstrated that it is entitled to recovery of the tandem switching rate under its agreement with BellSouth. Therefore, the provisions in Part A, Sections 2.2 and 2.4 of the interconnection agreement are inapplicable. Based on the foregoing, BellSouth shall not be required, pursuant to Part A Section 2.2 or 2.4 of the interconnection agreement, to execute amendments to its interconnection agreements with MCIm and MWC requiring BellSouth to compensate MCIm and MWC at the sum of the tandem interconnection rate and end office interconnection rate for calls terminated on their switches that serve a geographic area comparable to the area served by BellSouth's tandem switches.

VI. PAST CREDITS TO WORLDCOM

The parties announced at the beginning of the September 6, 2000 hearing that this issue had been stipulated. The parties agreed that if this Commission determined that WorldCom should be compensated at the tandem interconnection rate, payment would be due from BellSouth retroactive to July 8, 1999, the date that WorldCom requested an amendment to the interconnection agreement. Based upon our determination under Section III of this Order, this matter has been rendered moot.

VII. CONCLUSION

These proceedings have been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Act. This decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, *Florida Statutes*.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that MCImetro Access Transmission Services, LLC's and MCI WorldCom Communications, Inc.'s request that the Commission find that, pursuant to FCC Rule 51.711, these companies are entitled to be compensated at the sum of the tandem interconnection rate and the end office interconnection rate for calls terminated on their switches, if those switches serve a geographic area comparable to the area served by BellSouth Telecommunications, Inc.'s tandem switches, is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st Day of December, 2000.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director

Bureau of Records and Hearing Services.

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), *Florida Statutes*, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, *Florida Statutes*, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Bureau of Records and Hearing Services., 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, *Florida Administrative Code*; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

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