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October 13, 1999

FILED

OCT 13 1999

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TC-2000-225

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Motion to Dismiss Complaint for Failure to State a Claim and in the Alternative, Answer to Complaint.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Anthony K. Conroy/tm

Anthony K. Conroy

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

OCT 13 1999

Missouri Public
Service Commission

MCI WorldCom Communications, Inc.)

v.)

Southwestern Bell Telephone Company.)

Case No. TC-2000-225

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM
AND IN THE ALTERNATIVE, ANSWER TO COMPLAINT**

COMES NOW Southwestern Bell Telephone Company (SWBT), and for its Motion to Dismiss the Complaint filed in this case by MCI WorldCom Communications, Inc. (MCI) on behalf of MFS Communications Company, Inc. (MFS), and in the alternative for its Answer to MCI's Complaint, states to the Missouri Public Service Commission (Commission) as follows:

BACKGROUND

In its Complaint, MCI, on behalf of its affiliate MFS, again asks the Commission to ignore the fundamental interstate jurisdictional nature of Internet traffic and, in direct contravention to the Commission's decision in the Birch Telecom Internet arbitration,¹ rule that interstate, interexchange traffic carried by MFS for a portion of its journey to the Internet is really "local traffic" which MFS "terminates." MCI attempts to shoehorn this interstate and interexchange Internet traffic into a "local traffic" classification so that it can claim that MFS is entitled to reciprocal local compensation for "terminating" such traffic pursuant to the interconnection agreement between SWBT and MFS approved by the Commission on October

¹ In the Matter of the Petition of Birch Telecom of Missouri, Inc. for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection with Southwestern Bell Telephone Company, Case No. TO-98-278, Order Clarifying Arbitration Order (April 6, 1999) (Birch Telecom).

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18, 1996, despite the fact that the Federal Communications Commission (FCC) has held that this very same traffic is not local and does not terminate on MFS' network. For the reasons described below, the Commission should reject MCI's attempt to do an end run around the Commission's well-reasoned decision in the Birch Telecom case, in which the Commission appropriately deferred to the jurisdiction of the FCC over this traffic, and dismiss MCI's Complaint pursuant to Rule 2.070(6) for failure to state sufficient facts upon which relief can be granted.²

As background, MFS requested interconnection negotiations with SWBT by letter dated February 7, 1996, pursuant to Section 251(c)(1) of the federal Telecommunications Act of 1996 (Act) (which was signed into law by President Clinton on February 8, 1996). A copy of this letter is attached hereto as Exhibit 1. Immediately thereafter, SWBT and MFS commenced interconnection negotiations, which on July 16, 1996, culminated in the interconnection agreement between SWBT and MFS, pursuant to which MCI bases its Complaint in this case. According to MFS, the interconnection agreement resolved "all aspects of interconnection except for unbundling issues."³ The only unresolved interconnection issue between MFS and SWBT involved the price of unbundled loops MFS obtains from SWBT.⁴ On July 17, 1996, MFS filed a Petition for Arbitration with the Commission, in which it asked the Commission to arbitrate this sole unresolved issue. The interconnection agreement between SWBT and MFS resolving all other issues was jointly filed by SWBT and MFS with the Commission on July 18, 1996, and

² Rule 2.070(6) provides that "[T]he commission, without argument and without hearing, may dismiss a complaint for failure to state facts upon which relief can be granted or may strike irrelevant allegations."

³ Petition for Arbitration of Pricing of Unbundled Loops of MFS Communications Company, Inc., Case No. TO-97-23, filed July 17, 1996, at Para. 9.

⁴ Id. at pp. 4-5.

the Commission approved this interconnection agreement on October 18, 1996. Meanwhile, the Commission conducted an arbitration hearing on the sole remaining unresolved issue between SWBT and MFS involving the price of unbundled loops, and on November 6, 1996, issued its Arbitration Order in Case No. TO-97-23 relating to that issue.

From 1983 until present, including specifically the time period when the interconnection negotiations took place between MFS and SWBT in 1996, the FCC has exercised its jurisdiction over interstate enhanced service providers (ESPs), which according to the FCC includes Internet service providers (ISPs), and exempted these carriers from paying the interstate access charges which would otherwise apply to their provision of this interstate, interexchange traffic. Despite this undisputed fact, however, MCI now asks this Commission to find -- some 3-1/2 years after the negotiations between MFS and SWBT took place -- that both MFS and SWBT actually intended and agreed in 1996 to "reclassify" Internet traffic as "local traffic" to which reciprocal compensation applied, instead of the interstate, interexchange traffic the FCC had consistently determined it to be, and in addition, not even mention this special treatment in the interconnection agreement!

As will be described below, there is absolutely no evidence that the parties even discussed ESP (including Internet) traffic, much less mutually agreed to recharacterize such traffic as something different (i.e., local) than what the FCC had already repeatedly determined it to be. Had MFS taken the position during its interconnection negotiations with SWBT -- which it did not -- that Internet traffic should be treated differently (i.e., as "Local Traffic") for purposes of reciprocal local compensation than what the FCC had already determined it to be, and that such a provision should be included in the interconnection agreement, SWBT would not have agreed to include such language. MFS could then have included this issue as an unresolved

issue in its arbitration petition, just as Birch Telecom did some two years later when SWBT would not agree to reclassify Internet traffic as local traffic and pay Birch reciprocal local compensation for Internet traffic.

SWBT's position then -- as now -- was and is that Internet traffic is jurisdictionally interstate, interexchange traffic -- for which reciprocal local compensation is simply not applicable. SWBT did not agree to pay and has not knowingly paid any reciprocal local compensation to MFS, MCI or any other CLEC for Internet traffic in Missouri. Beginning at least as early as 1997, when SWBT first became aware that some CLECs were taking the position that Internet traffic should be compensated as if it were local traffic, and continuing on a regular basis since then, SWBT has repeatedly advised CLECs -- including MFS -- that Internet traffic is jurisdictionally interstate, interexchange traffic, for which reciprocal local compensation is not applicable. For example, on June 9, 1997, (approximately three months before MFS and SWBT exchanged live traffic pursuant to their interconnection agreement), SWBT sent a letter to numerous CLECs (including MFS) and the Commission Staff, advising each that Internet traffic was interstate, interexchange traffic subject to the FCC's jurisdiction, to which reciprocal local compensation was not applicable. Approximately six weeks later, SWBT responded to MFS' response to this letter, again advising MFS that Internet traffic was jurisdictionally interstate, interexchange traffic subject to the jurisdiction of the FCC. A copy of the July 30, 1997 response letter sent by MFS to SWBT is attached hereto as Exhibit 2. Copies of the original June 9, 1997, letters SWBT sent to the Commission Staff and numerous CLECs (including MFS) are attached hereto as Exhibit 3.

SWBT's position then and now is completely consistent with the Commission's Birch Telecom decision, in which the Commission appropriately recognized that Internet traffic is

interstate, not local, and does not terminate at an ISP's location, and deferred to the FCC's jurisdiction over this interstate traffic. SWBT's position is also completely consistent with the FCC's recent Internet Declaratory Ruling, described below, in which the FCC again confirmed that Internet traffic is jurisdictionally interstate, interexchange traffic, which is not local and which is not terminated by CLECs.

MOTION TO DISMISS

In its Complaint, MCI claims that its affiliate, MFS, is entitled to reciprocal local compensation for Internet traffic it carries in Missouri. As used herein, Internet traffic refers to calls originated by the end user of one local carrier (e.g., SWBT), which are destined for and routed to points on or beyond "the Internet"⁵ by an Internet Service Provider (ISP) served by (and often affiliated with) a second local carrier (e.g., MFS) located in the same local calling scope as the SWBT end user originating the call to the Internet. When a SWBT end user originates a call to the Internet through an ISP served by MFS, the call begins on the network facilities of SWBT, is handed off to and traverses MFS' network facilities (including network elements purchased from SWBT), and is connected to the Internet through the facilities of the ISP. In this example, a direct, unbroken, end-to-end stream of communication is established between SWBT's originating end user and the destination point(s) he or she wishes to reach on or beyond the Internet.

The crux of MCI's claim in this case is that the Commission should ignore the explicit definition of "Local Traffic" contained in the July 16, 1996 interconnection agreement between

⁵ Congress has defined the Internet as "the international computer network of both Federal and non-Federal interoperable packet switched data networks." 47 U.S.C. §230(e)(1). The United States Supreme Court has described the Internet as "an international network of interconnected computers" which "enable tens of millions of people to communicate with one another and to access vast amounts of information from around the world." Reno v. ACLU, 521 U.S. 844, 138 L.Ed. 2d 874, 884, 117 S.Ct. 2329, 2334 (1997).

SWBT and MFS (which by its very terms excludes Internet traffic) and instead "interpret" (i.e., redefine) this definition to include Internet traffic. By belatedly attempting to characterize its claim as arising under the interconnection agreement between MFS and SWBT, which was executed over three years ago, MCI seeks to avoid both the FCC's Internet Declaratory Ruling⁶ and this Commission's final decision in Birch Telecom that Internet traffic is not "local," but rather is interstate, interexchange access traffic subject to the jurisdiction of the FCC, and for which reciprocal compensation is not applicable under section 251(b)(5) of the Act. The Commission should reject MCI's attempt to do an "end-run" around the specific language contained in the agreement and the FCC's and this Commission's previous decisions and dismiss MCI's Complaint pursuant to Rule 2.070(6) for one simple reason -- it fails to state facts upon which relief can be granted.

As MCI admits in its Complaint, pursuant to the July 16, 1996, interconnection agreement between SWBT and MFS, and as contemplated by §251(b)(5) of the Act, reciprocal compensation is only applicable to local traffic. MCI Complaint, ¶16. As a critical component of the compensation arrangements between MFS and SWBT, the parties did not leave "local traffic" undefined. Instead, the parties very explicitly defined "Local Traffic" in Section 1.30 of their interconnection agreement as follows:

"Local Traffic," for purposes of intercompany compensation, means traffic that originates and terminates between or among end users within a SWBT local calling area as defined in SWBT's tariffs and any successor tariffs, including mandatory local calling scope arrangements but excluding Optional EAS areas. Mandatory Local Calling Scope is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area. In no event shall the Local Traffic area for purposes of local call termination billing

⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-98, FCC 99-38 (released February 28, 1999) (Internet Declaratory Ruling).

between the Parties be decreased during the Term of this Agreement. (emphasis added).

Section 5.3.1 of the interconnection agreement between MFS and SWBT, which is located under the heading "Reciprocal Compensation Arrangements -- Section 251(b)(5)," also provides that "Reciprocal compensation applies for transport and termination of Local Traffic and Optional EAS Traffic which a Telephone Exchange Service end user originates on SWBT's or MFS's network for termination on the other Party's network" (emphasis added).

MCI's Complaint must be dismissed because there is no question -- either of law or fact - - that Internet traffic is not "Local Traffic" for which reciprocal compensation is applicable under the July 16, 1996, Interconnection Agreement between MFS and SWBT. Contrary to MCI's implication, the FCC -- which clearly has jurisdiction over Internet traffic -- has never characterized Internet traffic as "local traffic." To the contrary, over the past approximately 16 years, the FCC has repeatedly and unequivocally recognized that enhanced service providers (ESPs) -- which according to the FCC includes ISPs -- utilize interstate access service in connection with their provision of service. For example, in its decision order exempting ESPs from interstate access charges, the FCC stated:

Among the variety of users of access service are facilities-based carriers, resellers (who use facilities provided by others), sharers, privately owned systems, enhanced service providers, and other private line and WATS customers, large and small, who "leak" traffic into the exchange. In each case the user obtains local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area. At its own location the user connects the local exchange call to another service or facility over which the call is carried out of state. These may consist either of owned or leased transmission capacity or a specific message service such as WATS. Depending upon the nature of its operation, a given private line or WATS user may or may not make significant use of local exchange service for interstate access. Thus, in the case in which a user connects an

interstate private line to a PBX, some traffic may originate and terminate at the user's location and other traffic may "leak" into the exchange in order that the calls can be completed at another location. A facilities-based carrier, reseller or enhanced service provider might terminate few calls at its own location and thus would make relatively heavy interstate use of local exchange services and facilities to access its customers. (emphasis added.)⁷

Since 1983, the FCC has continued to exercise its jurisdiction over this interstate, interexchange traffic by exempting ESPs, including ISPs, from the payment of tariffed interstate access charges which would otherwise be applicable to this interstate traffic. This exemption from paying interstate access charges, however, only confirms the fundamentally interstate and interexchange nature of this traffic. As MCI recognizes in its Complaint, interstate access charges do not apply to local traffic. The FCC's long-standing policy of exempting ESPs from paying access charges on Internet traffic would be wholly unnecessary (and beyond the FCC's jurisdiction under Section 2 of the Communications Act of 1934, 47 U.S.C. §152) if Internet traffic was "local" traffic, as MCI now claims on behalf of MFS in this case. The FCC reaffirmed this point in its Internet Declaratory Ruling when it stated:

The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. That the [FCC] exempted ESPs from access charges indicates its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary.⁸

Consistent with its long-standing treatment of ESP traffic as interstate, the FCC has recently specifically reaffirmed that Internet traffic is jurisdictionally interstate, is not "local" and does not "terminate" at the ISP's location, and in doing so has once again exercised its jurisdiction over Internet traffic and directly rejected the crux of MCI's argument in this case. In

⁷ In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Memorandum Opinion and Order, released August 22, 1983, Paragraph 79.

⁸ Internet Declaratory Ruling, at &16.

its February 28, 1999, Internet Declaratory Ruling, the FCC concluded that “the communications at issue here [Internet traffic] do not terminate at the ISP’s local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state.”⁹ The FCC went on to state that:

We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of Section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the Commission’s rules do not govern inter-carrier compensation for this traffic (emphasis added).¹⁰

The Missouri Commission has also recently addressed the jurisdictional nature of Internet traffic. In early 1998, Birch Telecom of Missouri, Inc. filed a petition for arbitration with the Commission in which it asked the Commission to determine -- just as MCI does here -- that Internet traffic was local in nature and thus subject to the reciprocal compensation requirements of §251(b)(5) of the Act. Birch recognized that the definition of “Local Traffic” proposed by SWBT -- which is nearly identical to the definition of “Local Traffic” contained in the MFS/SWBT interconnection agreement, would not include Internet traffic. As the Commission stated in its Order Clarifying Arbitration Order on April 6, 1999, “[T]he only issue presented for arbitration was whether calls made within the same local calling scope to an Internet Service Provider (ISP) are local in nature and subject to the payment of reciprocal compensation.”¹¹ The

⁹ Internet Declaratory Ruling, at &12 (emphasis added).

¹⁰ Internet Declaratory Ruling, at &26, note 87.

¹¹ Birch Telecom, p. 1.

Commission then recognized that it is the FCC -- not this Commission -- which has primary jurisdiction to determine appropriate compensation arrangements for interstate Internet traffic. As described above, for at least the past 16 years, the FCC has exercised this jurisdiction by repeatedly finding that Internet traffic is not local, does not terminate at the ISP's location, and, but for the FCC's temporary access charge exception for ESPs, interstate access charges would apply to this traffic. In the current rulemaking proceeding which has begun at the FCC, the FCC continues to exercise its jurisdiction over this inherently interstate traffic, and is addressing the very issue MFS seeks to litigate here -- appropriate compensation arrangements for interstate Internet traffic.

Faced with the FCC's unequivocal declaratory ruling that Internet traffic does not terminate at the ISP, is not local traffic and is not subject to the reciprocal compensation requirements contained in Section 251(b)(5) of the Act,¹² MCI is left to argue that when MFS and SWBT negotiated their interconnection agreement back in early 1996, and specifically negotiated the reciprocal compensation provisions and definition of "Local Traffic," they actually intended to explicitly "carve out" Internet traffic from what MFS, SWBT, this Commission and the FCC universally recognized it to be -- interstate access traffic -- and instead agreed to relabel Internet traffic (at least for purposes of intercompany compensation) as "local" traffic.

¹² It is interesting to note that before the FCC issued its Internet Declaratory Ruling, MCI took the same position that Birch Telecom took in its Missouri Internet arbitration -- i.e., that as a matter of law, Internet traffic is terminated at the ISP's location, and is local in nature, not interstate. See Response of MCI Telecommunications Corporation in Support of the Motion for Summary Judgment by PAC-West Telecomm, Inc. and in Opposition to Pacific Bell's Motion for Summary Judgment, attached hereto as Exhibit 4. As described above, however, now that the FCC has now specifically rejected these arguments, MCI has apparently abandoned them as well.

This last-ditch argument by MCI to avoid the Commission's Birch Telecom decision and this FCC's jurisdiction over this interstate traffic must also fall flat on its face, however. MCI does not and cannot claim that either SWBT or MFS even mentioned Internet traffic -- much less that both SWBT and MFS intended and agreed that Internet traffic should be carved out and treated differently than what the FCC, SWBT and MFS have all know it to be since 1983 (i.e., interstate access traffic) when they negotiated their interconnection agreement in 1996. SWBT has attached to this Motion to Dismiss as Exhibit 5 the affidavit of Eugene Springfield, who participated on behalf of SWBT in the negotiations with MFS which led to the July, 1996, interconnection agreement, and who was specifically responsible for negotiating on behalf of SWBT the provisions applicable to reciprocal compensation for "Local Traffic." As described in Mr. Springfield's affidavit, the individuals negotiating on behalf of MFS never mentioned treating enhanced service provider traffic, including Internet traffic, as something different than what SWBT understood it to be based on the FCC's access charge orders, i.e., interstate access traffic. (Exhibit 5, Springfield Affidavit, para. 3). Furthermore, as described in Mr. Springfield's affidavit, had MFS taken the position during the negotiations that the parties should pay reciprocal compensation for Internet traffic "as if" it were local traffic, SWBT would not have agreed to such a provision, but instead would have arbitrated this issue, just as SWBT did with Birch Telecom some two years later. (Exhibit 5, Springfield Affidavit, para. 4). Finally, again as described in Mr. Springfield's attached affidavit, SWBT insisted on the very explicit definition of "Local Traffic" contained in the agreement and described above in order to make very clear that traffic which MFS merely carried -- such as Internet traffic -- but which was not terminated by MFS was not "Local Traffic" and thus not subject to the requirement to pay reciprocal local compensation. (Exhibit 5, Springfield Affidavit, para. 5).

There clearly was no "meeting of the minds" between SWBT and MFS in 1996 that Internet traffic should be included in the definition of "Local Traffic" contained in the interconnection agreement between MFS and SWBT. In fact, the parties' detailed definition of "Local Traffic," along with the fact that both parties agreed that the reciprocal compensation arrangements only relate to "Section 251(b)(5)" of the Act, point to the inescapable conclusion that from all outward, objective expressions of "intent," both SWBT and MFS intended Internet traffic to be treated just as what both parties and the FCC recognized it was -- interstate access traffic.

What secret intent or belief MCI now claims MFS may have harbored during negotiations in 1996 is irrelevant to what the parties explicitly agreed to. If indeed MFS had such a desire that the parties treat Internet traffic differently than what the FCC had already decided, MFS was required to raise it during negotiations. Furthermore, MFS knew as early as June, 1997, that SWBT would not pay MFS reciprocal local compensation for Internet traffic, yet inexplicably waited over two years to file a complaint with the Commission. MCI should not now be permitted to in effect renegotiate the SWBT/MFS interconnection agreement from 1996. It is clear that much different language -- which SWBT would not have agreed to -- would have been necessary to accomplish this purpose, as Internet traffic is clearly not traffic which "originates and terminates between or among end users within a SWBT local calling area" as Section 1.30 of the SWBT-MFS Interconnection requires.

Finally, in paragraph 21 of its Complaint, MCI lists several "examples" which MCI asserts indicates that SWBT and MFS "understood and intended for local calls to ISPs to be treated as Local Traffic subject to reciprocal compensation under the Agreement." As will be described below, MCI's misplaced reliance on these "examples" actually illustrates the lack of

any real evidence to support its complaint. SWBT responds to each of MCI's "examples" as follows:

- MCI "example:" SWBT assigns its ISP customers a local seven-digit telephone number when they purchase local service for their use in providing information services;

SWBT response: SWBT assigns its ISP customers a local seven digit telephone number (just as MFS does) because the FCC, in its exercise of jurisdiction over the interstate, interexchange services provided by ISPs, has ordered that ISPs are exempt from interstate access charges that would otherwise be applicable to this traffic. The number of digits a caller dials to reach an ISP is irrelevant for purposes of determining the jurisdictional nature of the call.

- MCI "example:" When SWBT customers make local calls to ISPs, SWBT bills its customers for those calls pursuant to its local tariff;

SWBT response: SWBT customers do not make "local" calls to the Internet. SWBT does not charge its end-user customers access charges to reach any provider of interstate, interexchange services. The FCC, in its exercise of jurisdiction over this type of traffic, has exempted ISPs from paying interstate access charges. Had the FCC not created this exemption, ISPs would pay originating interstate access charges to local carriers for calls placed to the internet via the ISP.

- MCI "example:" Similarly, SWBT provides local services to ISPs under ordinary local tariffs for business customers;

SWBT response: As MCI is well aware, the FCC, which has jurisdiction over this interstate, interexchange Internet traffic, required all LECs to provide interstate access service to ISPs, including ISPs, for the same price as tariffed local business service.

- MCI "example:" In ARMIS and other reports filed with the FCC, SWBT has treated revenues and expenses associated with ISP traffic as intrastate rather than interstate; and

SWBT response: In January 1998, SWBT advised the FCC that beginning with its reported results for 1997 and going forward, SWBT was reporting and assigning Internet traffic as interstate access for separations purposes. A copy of the letter from SWBT to Ken Moran, Chief of the Accounting and Audits Division of the FCC, in which SWBT advised the FCC of its reporting of Internet traffic as interstate access traffic is attached hereto as

Exhibit 6. Since 1997, SWBT has also noted in its ARMIS reports that it considers Internet traffic to be jurisdictionally interstate.

- MCI "example:" SWBT does not have measures in place that segregate ISP traffic from other local traffic and measure such traffic for billing purposes. Indeed the industry standards that govern the form of bills that carriers send one another for reciprocal compensation do not require local calls to ISPs to be segregated or treated any differently from any other local calls.

SWBT response: Since becoming aware that some CLECs intended to claim reciprocal local compensation for interstate Internet traffic, SWBT has developed processes to attempt to identify, based on records relating to calls originated by SWBT end-users to ISPs served by CLECs, Internet traffic and exclude it from true local traffic for which reciprocal compensation is paid. Beginning in late 1997, SWBT implemented procedures to identify and track this traffic. As it has been able to identify Internet traffic, SWBT has excluded Internet traffic from the traffic on which it pays CLECs including MFS, reciprocal local compensation.

For the reasons described above, MCI's Complaint on behalf of MFS for reciprocal local compensation for Internet traffic must be dismissed by the Commission, as it clearly fails to state sufficient facts upon which relief can be granted. The Commission has already recognized in the Birch Telecom decision that the FCC has jurisdiction over Internet traffic. It would clearly be an inefficient use of the Commission's resources to relitigate this issue repeatedly, as Brooks, MFS and MCI WorldCom now seek to do. For the reasons described above, SWBT respectfully requests that the Commission issue an Order dismissing MCI's Complaint pursuant to Commission Rule 2.070(6) for failing to state facts upon which relief can be granted.

SWBT'S ANSWER TO MCI'S COMPLAINT

Without waiving its position that MCI's Complaint for reciprocal local compensation for Internet traffic fails to state sufficient facts upon which relief can be granted, SWBT answers each of the specific allegations contained in the corresponding numbered paragraphs of MCI's Complaint as follows with the understanding that unless SWBT specifically admits an allegation contained in MCI's Complaint, SWBT denies the allegation:

1. SWBT specifically denies that MCI's Complaint on behalf of MFS states a valid claim or action upon which relief can be granted. SWBT admits that the Commission is authorized to hear MCI's Complaint solely under the Act. SWBT denies the remaining allegations contained in paragraph 1 of MCI's Complaint.

2. SWBT admits that it entered into an interconnection agreement with MFS pursuant to the Act. SWBT admits that the entire interconnection agreement may be relevant to MCI's Complaint. SWBT admits that it negotiated with MFS the provisions of the interconnection agreement relating to intercarrier compensation, but denies that these negotiations occurred with MFS in 1997. SWBT admits that the Commission approved the negotiated provisions of its interconnection agreement with MFS in October, 1996.

3. SWBT admits that the interconnection agreement between SWBT and MFS requires the parties to pay each other reciprocal compensation pursuant to the requirement of §251(b)(5) of the Act at the rates agreed therein for Local Traffic as defined in the agreement. SWBT denies that Internet traffic is Local Traffic as defined in the agreement. SWBT denies that it has wrongfully withheld any reciprocal compensation payments relating to Internet traffic.

PARTIES

4. SWBT does not have sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of MCI's Complaint regarding the corporate structure of MCI and/or MFS, and therefore denies those allegations.

5. The information contained in paragraph 5 of MCI's Complaint does not call for any response by SWBT.

6-7. SWBT admits the allegations contained in paragraphs 6 and 7 of MCI's Complaint.

JURISDICTION

8. SWBT admits that the Commission has jurisdiction pursuant to federal law over complaints relating to an interconnection agreement entered into pursuant to the Act and approved pursuant to the Act by the Commission. SWBT denies that the Commission has jurisdiction under state law to decide this Complaint, and denies that MCI has asserted any claim under state law. SWBT denies that the Commission has jurisdiction over Internet traffic as defined above, or has authority to reclassify Internet traffic as "Local Traffic." SWBT denies the remaining allegations contained in paragraph 8 of MCI's Complaint.

GENERAL ALLEGATIONS

9. SWBT does not have sufficient information to either admit or deny the general allegations contained in paragraph 9 of MCI's Complaint, and therefore specifically denies each and every allegation contained in this paragraph.

10. SWBT admits that in general, the Act requires incumbent LECs to open their networks for use by competitors.

11. SWBT admits that in general, that the terms and conditions upon which carriers such as MCI interconnect with SWBT may be contained in interconnection agreements entered pursuant to the Act. SWBT admits that the Act contemplates negotiated interconnection agreements between carriers, and also authorizes a state commission to arbitrate any open issue. SWBT admits that pursuant to §252(e), any interconnection agreement under the Act adopted by negotiation or arbitration shall be submitted for approval to the state commission for approval or rejection.

12. SWBT admits that in general, parties to interconnection agreements under the Act may agree to obligations that exceed the requirements of the Act, but SWBT denies that it has done so with respect to the reciprocal compensation provisions contained in the interconnection agreement between SWBT and MFS.

13. SWBT admits that inter-carrier compensation is an issue that may arise in the context of negotiating an interconnection agreement under the Act. SWBT admits that customers of one local exchange carrier will likely call customers of another local exchange carrier. SWBT admits that reciprocal compensation and access charges are two mechanisms local exchange carriers utilize to receive compensation for originating and terminating calls. SWBT specifically denies the remaining allegations of paragraph 13.

14. SWBT admits that pursuant to the Act, LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of local calls. §251(b)(5). SWBT admits that under the Act, reciprocal compensation mechanisms must provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carriers. §252(d)(2). SWBT admits that when a customer of one LEC originates a local call which is

terminated to an end user customer served by a different LEC, the originating end user does not pay the LEC which terminates the local call for terminating this call. The caller originating this call pays its LEC for local telephone service, usually on a flat rate basis. SWBT admits that under the Act, the LEC serving the customer that originated a local call to a customer served by a different LEC is required to pay reciprocal compensation to the second LEC to permit the second LEC to recover its costs of terminating this call. SWBT denies any other allegations contained in paragraph 14 of MCI's Complaint.

15. SWBT admits that access charges are another form of inter-carrier compensation, applicable generally to interexchange calls. SWBT admits that when any end user customer of a LEC initiates an interexchange call, the end user customer initiating this call will generally pay the interexchange carrier selected (which may be the same carrier as the end user's LEC) to carry the call. SWBT admits that interexchange carriers generally pay LECs access charges to compensate LECs for the cost of local facilities utilized to either originate or terminate interexchange calls. SWBT admits that the service provided by LECs in this context is generally referred to as "exchange access" service as defined in the Act. SWBT would point out, however, that some providers of interstate interexchange service (e.g., enhanced service providers such as ISPs) are exempt under FCC rules from paying access charges to LECs despite the fact that these calls are interexchange -- and not local -- in nature. SWBT notes that the interstate character of Internet traffic is confirmed by the very existence of the FCC access charge exemption, as the FCC has jurisdiction to grant the exemption only because ESP traffic, including Internet traffic, is interstate in nature. SWBT denies any remaining allegations contained in paragraph 15 of MCI's Complaint.

16. SWBT admits that Section 5.3 of the interconnection agreement between SWBT and MFS provides that “[R]eciprocal compensation applies for transport and termination of Local Traffic and Optional EAS Traffic which a Telephone Exchange Service end user originates on SWBT’s or MFS’s network for termination on the other Party’s network.” SWBT admits that the interconnection agreement between SWBT and MFS defines “Local Traffic” as described above and quoted in paragraph 16 of MCI’s Complaint, and also describes which traffic reciprocal local compensation applies to, at the rates agreed therein. SWBT denies that “[L]ocal calls to ISPs constitute Local Traffic subject to reciprocal compensation under the Agreement,” as alleged by MCI in the last sentence of paragraph 16 of its Complaint. As described above in SWBT’s Motion to Dismiss, Internet traffic is not local traffic, but rather is interstate, interexchange traffic subject to the FCC’s jurisdiction, to which reciprocal compensation does not apply pursuant to the interconnection agreement between SWBT and MFS.

17. SWBT admits that pursuant to Section 5.3.5 of the interconnection agreement between it and MFS, the reciprocal compensation arrangements set forth therein are not applicable to Switched Exchange Access Services. SWBT admits that the interconnection agreement between it and MFS provides that when the parties provide each other with Switched Exchange Access Services, they will share any access charges paid by long-distance companies. SWBT specifically denies that it has treated Internet traffic as “Local Traffic” subject to reciprocal compensation under the interconnection agreement with MFS. SWBT specifically denies all other allegations contained in paragraph 17 of MCI’s Complaint.

18. SWBT denies the allegations contained in paragraph 18 of MCI’s Complaint.

19. SWBT admits that ISPs regularly provide their customers with a service which allows their customers to initiate an interstate, interexchange telephone call to access the Internet. SWBT admits that the Act contains a definition of "Information Services" as quoted in paragraph 19 of MCI's Complaint. Pursuant to numerous FCC decisions, all enhanced service providers (ESPs), including ISPs, are exempt from paying access charges to LECs for the interstate access service they use. The FCC's jurisdiction to carve out this traffic and exempt it from access charges is based upon the interstate nature of ESP traffic. Based solely on the FCC's access charge exemption, ESPs are permitted to purchase their links to the public switched telephone network through intrastate business tariffs, rather than through interstate access tariffs. SWBT specifically denies any remaining allegations contained in paragraph 19 of MCI's Complaint.

20. SWBT does not have sufficient information to either admit or deny whether the "most common method by which an Internet user connects to an ISP is via the public switched telephone network" and therefore denies this allegation. SWBT admits that pursuant to the FCC's access charge exemption decisions, ESPs (including ISPs) purchase their interstate access at rates contained in intrastate business tariff. If a SWBT customer chooses to initiate an interstate, interexchange call, SWBT does not bill its customer for this call. Rather, SWBT receives its tariffed access rates from the interexchange carrier that carries this call between exchanges. In the case of interstate Internet traffic, however, based on the FCC's exercise of jurisdiction over this traffic, SWBT does not receive any access revenues, but instead receives only an amount equal to SWBT's tariffed basic local rate for businesses. SWBT denies that Internet traffic destined for ISPs is "local traffic." SWBT cannot answer for other local exchange carriers, but SWBT specifically denies that it has not attempted to report Internet

traffic as interstate traffic in reports filed with the FCC. SWBT denies any other allegation contained in paragraph 20 of MCI's Complaint.

21. SWBT denies each of the allegations and "examples" contained in paragraph 21 of MCI's Complaint.

22. SWBT denies each of the allegations contained in paragraph 22 of MCI's Complaint.

23. SWBT denies that it breached the interconnection agreement with MFS. Internet traffic is not local traffic, and therefore SWBT's refusal to pay MFS reciprocal local compensation for Internet traffic does not violate, but rather is consistent with the terms of the interconnection agreement.

24. SWBT admits that approximately three years after MFS and SWBT executed their interconnection agreement, SWBT received the demand letter attached to MCI's Complaint claiming that SWBT was required to pay MFS (or MCI) reciprocal local compensation for Internet traffic. As described above, the 1996 interconnection agreement between SWBT and MFS does not provide for reciprocal local compensation to be paid for interstate Internet traffic, and therefore SWBT denies that the "obligation" alleged by MCI exists. SWBT denies that it is in material breach of its interconnection agreement with MFS. SWBT denies that MCI or MFS has suffered any compensable damages, and denies that the amount of damages alleged by MCI is accurate. In any event, SWBT denies that the Commission has any jurisdiction to award money damages to MCI in this case.

WHEREFORE, SWBT respectfully requests that the Commission enter an Order dismissing MCI's Complaint for the reasons described above.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Anthony K. Conroy/tm
PAUL G. LANE #27011
LEO J. BUB #34326
ANTHONY K. CONROY #35199
KATHERINE C. SWALLER #34271
Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)
314-247-0014 (Facsimile)



Communications Company, Inc.

GOVERNMENT AFFAIRS OFFICE
3000 K STREET, N.W., SUITE 300
WASHINGTON, D.C. 20007
TEL. (202) 424-7709
FAX (202) 424-7645

February 7, 1996

VIA OVERNIGHT MAIL

Horrace Wilkin
Regional President
Southwestern Bell -- Missouri
100 N. Tucker
St. Louis, Missouri

Re: Request for Interconnection Negotiations Pursuant to Section 251(c)(1) of the Telecommunications Act of 1996

Dear Mr. Wilkin:

As you already know, President Clinton is about to sign into law the Telecommunications Act of 1996. I am writing to inform you that pursuant to Section 101 of that Act, creating new Section 251(c)(1) of the Communications Act, MFS Communications Company, Inc. ("MFS"), on behalf of its subsidiaries providing telecommunications services in Missouri, requests that Southwestern Bell -- Missouri commence good faith negotiations with us to fulfill the interconnection duties described in paragraphs (1) through (5) of new Section 251(b) and paragraphs (2) through (6) of new Section 251(c). I also remind you that as a precondition to receiving authority to provide interLATA services in-region, Southwestern Bell -- Missouri must offer terms and conditions for interconnection with your local network facilities and services that satisfy the more extensive 14-point checklist provided in new Section 271(c)(2)(B).

To help initiate the process of interconnection negotiations, we have attached a copy of a model agreement that includes certain of the terms and conditions for interconnection now required of incumbent local exchange carriers under the Telecommunications Act of 1996. In accordance with the duties of incumbent local exchange carriers found in new Sections 251 and 252 of the Communications Act, and pursuant to the specific interconnection requirements added in new Section 271(c)(2)(B) as a condition for interLATA Authority, the following arrangements are offered as a general framework from which we may commence interconnection negotiations:

1. **Network Interconnection Architecture (New Sections 251(c)(2), 271(c)(2)(B)(i), (x))**

MFS and Southwestern Bell - Missouri should establish efficient and reciprocal interconnections between their respective networks. Any interconnection established

February 7, 1996

Page 2

between the parties should include non-discriminatory and real-time access to databases and associated signaling necessary for call routing and completion, and this access should be provided at cost-based rates pursuant to new Section 252(d)(1).

2. Meet-Point Billing Arrangements (New Sections 251(c)(2)(D) and 271(c)(2)(B)(i))

Southwestern Bell -- Missouri should extend to MFS meet-point billing arrangements, so that MFS may timely offer a common transport option to parties purchasing originating and terminating switched access services from MFS' end office switches which it utilizes to provide local exchange services.

3. Reciprocal Exchange of Traffic and Compensation (New Sections 251(b)(5) and 271(c)(2)(B)(xiii))

MFS and Southwestern Bell -- Missouri should reciprocally exchange traffic between their networks, so as to allow the seamless and transparent completion of all intraLATA (including "local") calls between their respective exchange service users in a given LATA.

The termination rate should be imputable into Southwestern Bell -- Missouri's end user calling rates, after discounts. Such arrangement is contemplated by new Section 252(d)(2)(B)(i) of the Communications Act.

Additionally, Southwestern Bell -- Missouri should agree to route traffic through its tandem network in order to enable the efficient interchange of traffic between MFS and other local service competitors or independent LECs operating in the LATA, via the same trunk groups over which MFS and Southwestern Bell -- Missouri exchange traffic in that LATA. Such transiting function should be provided at the option of MFS and the other carriers. For such traffic which MFS originates to another local competitive carrier or independent LEC, Southwestern Bell -- Missouri should bill MFS a reasonable, incremental cost-based transiting charge per minute; Southwestern Bell -- Missouri should be responsible for negotiating transiting compensation with the other competitors or independent LECs for traffic they originate to MFS via the Southwestern Bell -- Missouri tandem. To the extent Southwestern Bell -- Missouri offers a more favorable transiting charge to any other independent or competitive local service provider, Southwestern Bell -- Missouri should provide that same rate to MFS.

4. Ancillary Platform Arrangements (New Sections 271(c)(2)(B)(vii)-(viii))

The agreement should enable MFS to offer seamless service by establishing access to all applicable ancillary platform arrangements, including the following: 9-1-1/E-9-1-1, Directory Assistance, Directory Listings and Directory Distribution, Transfer of Service

Announcement, Coordinated Repair Calls, and Busy Line Verification and Interrupt. MFS must be allowed access to these platforms on non-discriminatory and cost-based terms pursuant to the pricing standards established in new Section 252(d)(1). 9-1-1 access must include: (1) appropriate trunk connections to Southwestern Bell -- Missouri 9-1-1/E-9-1-1 selective routers or tandems; (2) automated procedures for loading MFS-supplied data into ALI databases; and (3) comply with all local and regional 9-1-1/E-9-1-1 plan requirements.

5. Unbundled Loops (New Sections 251(c)(2),(3) and 271(c)(2)(B)(ii),(iv))

Southwestern Bell -- Missouri should provide unbundled loops to MFS on cost-based terms (pursuant to new Section 252(d)(1)), along with a specific rollout plan. MFS should be allowed to access and interconnect to unbundled loops via expanded interconnection facilities. Loops should be provided at a fixed, monthly recurring, per-loop rate which is imputable into standard bundled local exchange access line rates. All relevant quality, provisioning, maintenance and conversion intervals for unbundled loops should be comparable in all material respects to the quality and intervals Southwestern Bell -- Missouri provides to its most favored end users for bundled access line services.

In addition to unbundling of loops from the central office to the customer premises, MFS also requests (a) interconnection pursuant to Section 251(c)(2) at the first point in the network (looking out from the central office) at which it can obtain access to a dedicated pair of copper wires to the customer's premises, and (b) unbundled access pursuant to Section 251(c)(3) to the portion of the local loop extending from this interconnection point to the customer's premises. Depending on the configuration of the local network, the interconnection point may in some instances be at the central office itself, but in other instances may be at other intermediate distribution points in the network, including (for example) locations where copper loops are connected to a remote switching module, or to the subscriber terminal of a Digital Loop Carrier or similar loop carrier system.

6. Number Portability (New Sections 251(b)(2) and 271(c)(2)(B)(xi))

Until such time as permanent number portability has been fully implemented pursuant to new Section 251(b)(2), MFS and Southwestern Bell -- Missouri will provide interim number portability to one another through the use of remote call forwarding ("RCF") capabilities. Interim and permanent number portability should include telephone numbers used for the provision of information services, including but not limited to "976" prefixes. On all calls which terminate to a party through an RCF arrangement, that party should be compensated by the party providing the RCF arrangement, as if the call had been directly-dialed to the telephone number to which the call had been forwarded. Thus, for instance, an RCF'ed interLATA call would be compensated at the otherwise applicable intrastate terminating

switched access rate; an RCF'ed "local" call would be compensated at the reciprocal compensation rate which would otherwise apply for direct-dialed local calls. The parties should commit to migrate to the statutorily required permanent number portability solution as soon as technically possible. Costs to implement permanent number portability must be borne by all telecommunications carriers on a competitively neutral basis pursuant to new Section 251(e)(2).

7. Access to Rights-of-Way (New Sections 251(b)(4) and 271(c)(2)(B)(iii))

Southwestern Bell -- Missouri should afford MFS access to its poles, ducts, conduits, and rights-of-way to the extent needed by MFS to provide local exchange services. This includes access to customer buildings, and "telephone closets," risers, and conduits within buildings. Such access should be provided at rates, terms, and conditions consistent with the Pole Attachment Act of 1978 as amended by the Telecommunications Act of 1996 (amended 47 U.S.C. § 224).

8. Resale of Local Services (New Sections 251(c)(4) and 271(c)(2)(B)(xiv))

Southwestern Bell -- Missouri should offer to MFS for resale, at wholesale rates as defined in new Section 252(d)(3), any telecommunications services, specifically including without limitation Centrex services, that Southwestern Bell -- Missouri provides at retail to subscribers who are not telecommunications carriers.

9. Physical Collocation (New Section 251(c)(6))

MFS requests that Southwestern Bell -- Missouri provide MFS physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier to the extent that space is available at such locations.

10. Numbering Administration (New Sections 251(b)(3) and 271(c)(2)(B)(ix))

Until the date by which telecommunications numbering administration guidelines, plan, or rules are established pursuant to new Section 251(e), Southwestern Bell -- Missouri should provide non-discriminatory access to telephone numbers for assignment to MFS' customers.

11. Notice of Changes (New Section 251(c)(5))

MFS requests that Southwestern Bell -- Missouri advise us as to how it intends to provide reasonable public notice of any changes in the information necessary for the transmission and

February 7, 1996

Page 5

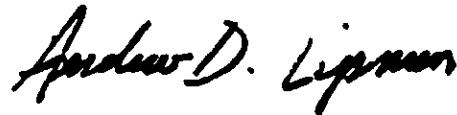
routing of services using Southwestern Bell -- Missouri's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.

The above listing of requested arrangements is meant only to provide a basis from which to commence interconnection negotiations. MFS reserves the right to suggest additional or modified arrangements as negotiations proceed. It is the hope of MFS that a legally sufficient and mutually satisfactory agreement may be reached voluntarily between the parties. In the case that this is not achievable, however, MFS reminds Southwestern Bell -- Missouri that if no agreement is reached within 135 days from the date of this letter, either party may request that the State commission enter the negotiations as arbitrator of any unresolved issues pursuant to new Section 252(b).

In light of the need to engage in meaningful negotiations before the expiration of the 135 days provided in the new Act for voluntary negotiations, MFS requests a written response to this letter by February 22. Upon receiving your written acceptance to engage in these statutorily required negotiations, we hope to plan with you a preliminary schedule of meetings to discuss these issues in detail.

I look forward to your prompt response to our request to negotiate a comprehensive interconnection agreement pursuant to the terms specified in the newly enacted Telecommunications Act of 1996. Should you have any questions as to this correspondence, please contact me at (202) 424-7833 or Alex Harris at (212) 843-3051.

Sincerely,



Andrew D. Lipman
Senior Vice President
Legal & Regulatory Affairs

cc: Royce J. Holland
Alex J. Harris

Attachment

154107.1

EXHIBIT B

164771.1

Unbundled Element Rates

Loops

1. Urban Zone Rate:

Rate per Element Delivered
via Individual 2/4-wire Hand-off:

	Non- Recurring	Monthly Recurring
2-wire analog voice grade Loop	\$50.00	\$7.50
4-wire analog voice grade Loop	\$50.00	\$7.50
2-wire ADSL Loop	\$50.00	\$7.50
2-wire HDSL Loop	\$50.00	\$7.50
4-wire HDSL Loop	\$50.00	\$7.50
2-wire ISDN digital grade Loop	\$75.00	\$7.50
4-wire DS-1 digital grade Loop	\$PUC and/or FCC Private Line and/or Special Access Rate	
4-wire DS-1 digital DID port	\$PUC DS-1 digital DID Port Rate	

2. Suburban Zone Rate:

Rate per Element Delivered
via Individual 2/4-wire Hand-off:

	Non- Recurring	Monthly Recurring
2-wire analog voice grade Loop	\$50.00	\$10.00
4-wire analog voice grade Loop	\$50.00	\$10.00
2-wire ADSL Loop	\$50.00	\$10.00
2-wire HDSL Loop	\$50.00	\$10.00
4-wire HDSL Loop	\$50.00	\$10.00
2-wire ISDN digital grade Loop	\$75.00	\$10.00
4-wire DS-1 digital grade Loop	\$PUC and/or FCC Private Line and/or Special Access Rate	
4-wire DS-1 digital DID port	\$PUC DS-1 digital DID Port Rate	

3. Rural Zone Rate:

Rate per Element Delivered
via Individual 2/4-wire Hand-off:

	Non- Recurring	Monthly Recurring
2-wire analog voice grade Loop	\$50.00	\$12.00
4-wire analog voice grade Loop	\$50.00	\$12.00
2-wire ADSL Loop	\$50.00	\$12.00
2-wire HDSL Loop	\$50.00	\$12.00
4-wire HDSL Loop	\$50.00	\$12.00
2-wire ISDN digital grade Loop	\$75.00	\$12.00
4-wire DS-1 digital grade Loop	\$PUC and/or FCC Private Line and/or Special Access Rate	
4-wire DS-1 digital DID port	\$PUC DS-1 digital DID Port Rate	

Urban, Suburban, and Rural Geographic Zone Pricing shall apply for Unbundled Loops. Unless otherwise mutually agreed, rates for Urban, Suburban, and Rural areas will be defined by utilizing the most recent, publicly available, U.S. Government Census report. Urban areas will be defined as area where end users are located within or served by GTE wire centers contained within the largest populated municipality within a given Metropolitan Statistical Area (MSA). The suburban area will be defined as area where end users are located within or served by GTE wire centers contained within the remaining municipalities (or area for non-incorporated portions) within the MSA. Rural areas will be defined as area where end users are located within or served by GTE wire centers contained within the remaining areas of the state that are not within an MSA of the state. Urban, Suburban, and Rural areas are defined in an attachment to this agreement identified as Exhibit 13.0.

Rates for Unbundled Loops are contained in Exhibit 2.0. The rates include cross-connection between the GTE MDF and MFS' collocated equipment and no additional fees are applicable, including but not limited to End User Common Line (EUCL) and Carrier Common Line (CCL).

Larry B. Cooper
General Manager
Competitive Provider
Account Team

Exhibit 2
Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 464-8145
Fax 214 464-1486



July 30, 1997

Mr. Alex J. Harris
Vice President, Regulatory Affairs
MFS
33 Whitehall Street, 15th Floor
New York, N.Y. 10004

Dear Alex:

In response to your June 27, 1997 letter where you dispute SWB's position on treatment of Internet Service Provider (ISP) traffic for the purpose of compensation, I respectfully offer an alternative approach toward resolution.

First, SWB does not view declining to pay MFS any termination compensation for Internet traffic pursuant to a local interconnection agreement, a direct violation of the letter and spirit of our Interconnection Agreement or The Act. The FCC has made it quite clear that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic." First Report and Order in CC Docket No. 96-98, released August 8, 1996, para. 1034 (emphasis added). Internet traffic by its very nature is jurisdictionally interstate, or at an absolute minimum is interexchange. In receiving and transporting end user calls originating on a LEC's network and bound for the Internet, an LSP is not "terminating" any kind of call. Rather, it is merely acting as an intermediary switching point along an originating, jurisdictionally interstate call. The call does not "terminate" on the LSP's network because the LSP is merely passing the call along to an ISP who in turn is then passing the call along to the World Wide Web - an interstate transmission under every definition of that term as settled by the FCC and reviewing courts for many years.

Mr. Alex J Harris

July 30, 1997

Page 2

Since the FCC had a formal proceeding on this very issue (CCB/CPD 97-30), I suggest that we wait to see the outcome of those proceedings. Of course, if after the conclusion of the pleading cycle in that proceeding, you still feel that SWB has not responded to points being made by your company in support of its position, please just let me know.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Cooper". The signature is written in a cursive, flowing style with a large initial "T" and a long, sweeping underline.



June 1, 1997

Mr. John VanEschen
Manager Telephone Department
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

Dear John:

As discussed in our telephone conversation of June 5, 1997, the purpose of this letter is to address local terminating compensation for the delivery of traffic destined for Internet Service Providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC VS. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported

Mr. VanEschen

Page 2

June 9, 1997

over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you have any questions, I can be reached on 314 247-2509.

Sincerely,

(SGD.) MARK RUDLOFF

Director-Competitive Strategy &
Regulatory Policy

bcc: Mr. Bailey
Mr. Lane

RUDLOFF 3;

Southwestern Bell

June 9, 1997

«M» «FirstName» «LastName»
«Title»
«Company»
«Address1»
«Address2»
«City» «State» «ZipCode»

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear «M» «LastName»:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

«M» «FirstName» «LastName»

June 9, 1997

Page 2

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, «Account», on «Number».

Sincerely,

original signed by "Larry B. Cooper"

Addressees of letters dated June 9, 1997 and June 10, 1997 signed by Ms. Cooper.

Ms. Mary C. Albert
Attorney
KMC Telecom, Inc.
3000 K Street, N.W.
Suite 300
Washington, D. C. 20007-5116

Mr. Mike Pelletier
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Teleport Communications Group
2755 North Hickory Ridge Rd.
Highland, MI 48357

Mr. Bill Mullen
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MFS WorldCom
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Mr. Gary George
President
American MetroComm Corporation
6001 Stars & Stripes Blvd.
Suite 100
New Orleans, LA 70126

Mr. Jerry James
General Manager
Golden Harbor of Texas, Inc.
401 Carlson Circle
San Marcos, TX 78666

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Pac-West Telecomm, Inc.,)	
)	
Complainant,)	C. 97-11-034
)	Filed November 21, 1997
v.)	
Pacific Bell,)	
)	
Defendant.)	

**RESPONSE OF
MCI TELECOMMUNICATIONS CORPORATION (U 5011 C)
IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT
BY PAC-WEST TELECOMM, INC. AND IN OPPOSITION TO
PACIFIC BELL'S MOTION FOR SUMMARY JUDGMENT**

Nikayia K. Nail, Esq.
Regulatory Manager
Western Public Policy Group
MCI TELECOMMUNICATIONS CORPORATION
201 Spear Street, 9th Floor
San Francisco, CA 94105
Telephone: (415) 228-1150
Facsimile: (415) 228-1094

March 13, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Pac-West Telecomm, Inc.,)

Complainant,)

v.)

Pacific Bell,)

Defendant.)

C. 97-11-034

Filed November 21, 1997

**RESPONSE OF
MCI TELECOMMUNICATIONS CORPORATION (U 5011 C)
IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT
BY PAC-WEST TELECOMM, INC. AND IN OPPOSITION TO
PACIFIC BELL'S MOTION FOR SUMMARY JUDGMENT**

MCI Telecommunications Corporation ("MCI") files this Response pursuant to Rule 45 of the California Public Utilities Commission's ("CPUC") Rules of Practice and Procedure. MCI successfully intervened in this case on January 20, 1998 and files this Response in accordance with the ALJ's Order on the Prehearing Conference, dated February 23, 1998. Consistent with that Ruling, MCI has complied with the following requirements: 1) MCI has not broadened the issues raised under the parties' common briefing outline; 2) MCI has adhered to the common briefing outline; and 3) MCI has complied with the already established procedural schedule set forth in the ALJ's Ruling.

I. INTRODUCTION

As discussed below, MCI supports Pac-West Telecomm, Inc.'s ("Pac-West") Motion for Summary Judgment against Pacific Bell ("Pacific") based on Pac-West's

discussion of the jurisdictional nature of Internet Service Provider ("ISP") traffic. The jurisdictional classification of ISP traffic is of growing concern to MCI and other carriers that have interconnection agreements with local exchange companies ("LECs") who, like Pacific, have attempted to evade their responsibilities under those agreements by redefining ISP traffic as interstate instead of local.

Pac-West's argument irrefutably shows that the traffic originated by Pacific's end-users and terminated to ISPs hosted on Pac-West's network are local calls and entitled to reciprocal compensation under the Pac-West/Pacific Interconnection Agreement ("Agreement"). MCI fully supports Pac-West's motion for summary judgment based on the fact that such calls are local. For this reason, MCI opposes Pacific's argument that such calls are interstate calls which should be subjected to access charges.

II. ARGUMENT

A. Pac-West is Entitled to Summary Judgment Based on the Jurisdictional Nature of Calls to ISP's Hosted on its Network

Without taking into account Pac-West's other arguments in its Motion for Summary Judgment,¹ Pac-West is entitled to summary judgment based solely on the jurisdictional nature of calls to ISP's hosted on its network.² The issue drawn by Pacific (whether ISP traffic is interstate or intrastate for purposes of reciprocal compensation)³ can be even more narrowly drawn: whether a call begun on Pacific's network and

¹ See Memorandum of Points and Authorities in Support of Motion by Pac-West Telecomm Inc. for Summary Judgment, *Pac-West Telecomm, Inc. v. Pacific Bell*, Case No. C.97-11-034 (filed February 27, 1998) ("Pac-West Memorandum of Points and Authorities").

² Summary judgment is appropriate where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. Cal. Code Civ. Pro. §437(c).

³ Memorandum of Points and Authorities in Support of Pacific Bell's Motion for Summary Judgment, *Pac-West Telecomm, Inc. v. Pacific Bell*, Case No. C.97-11-034 (filed, February 27, 1998) ("Pacific's Memorandum of Points and Authorities") p. 10.

terminated at an ISP hosted on Pac-West's network is classified as interstate or intrastate as a matter of law.⁴ It is undeniable that such calls are local calls.

Under the FCC's Local Competition Order,⁵ a call placed over the public switched telephone network is "terminated" for the purposes of reciprocal compensation when the call is delivered to the telephone exchange service bearing the "called" telephone number.⁶ In other words, the call terminates when it reaches the called party at the phone number that the end-user dialed—in this case the ISP.

The calls in question here occurred when an end-user on Pacific's network connected to an ISP's computer equipment hosted on a Pac-West line by a telephone call to a number with an NPA-NXX assigned to the same local calling area as the end-user. Since the Pacific end-user calls at issue here are well within the 12 mile radius between rate centers of Pac-West and Pacific, the traffic is local.⁷ The fact that additional, enhanced information services ("EIS") occurred after the call was completed at the ISP is irrelevant for the purposes of classifying the call.

⁴ Pacific argues that Pac-West carries the additional burden of showing that the parties intended such calls to be considered local. (emphasis original) See Pacific's Memorandum of Points and Authorities at 10. This is not true. As a general principle of law, common industry usage is incorporated into the parties' understanding of the technical terms of their contracts. See Civil Code § 1655. When the Agreement was negotiated, the phenomenon of Internet traffic was well known to the parties.

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket no. 96-98, First Report and Order, FCC 96-325 (rel. August 8, 1996) ("Local Competition Order").

⁶ *Id.* at ¶1040.

⁷ The Agreement defers to the Commission's existing definition of local calls. See Pac-West Telecomm, Inc.'s Separate Statement of Undisputed Material Facts and Evidence on Supporting Motion for Summary Judgment, (filed February 27, 1998) ("Pac-West's Undisputed Facts") ¶5. The Commission defines local calls as calls measured within a 0-12 mile radius from the rate centers of the originating and terminating NPA-NXX of the centers (including ZUM Zone 1, 2, and 3 and EAS). See Decision No. 89.10-031, Ordering Paragraph 1.

B. Pacific's Argument that the Internet as a Whole is an Interstate Network Mischaracterizes the Actual Communication between Pacific and Pac-West's Networks.

Pacific's entire argument is based on the nature of the Internet as a network. Specifically, Pacific argues that the Internet is a "world-wide packet-switched data network of interconnected computers" and that information accessible via the Internet crosses state lines and is therefore interstate.⁸ This confuses the issue. The issue before the Commission is not whether the Internet itself is interstate, but whether the traffic carried between Pacific and Pac-West's demarcation points are local or interstate in nature.

Pacific mischaracterizes the portion of the call entitled to reciprocal compensation in its statement that "the traffic [is] interstate in nature because it originated in one state and terminated in another."⁹ Pacific contends that calls to ISPs do not "terminate" at the ISP's equipment, but rather terminate on the Internet itself.¹⁰ This simply is not true.

The portion of the call contemplated by the reciprocal compensation provisions of the Agreement and that provided for in the Telecommunications Act of 1996¹¹ is that portion of the call that terminates at the ISP ~~and~~ the EIS that occur ~~after~~ the Internet connection is made. Pacific mistakenly compares the ISP to a "leaky PBX"¹² and takes into account the information transfer that occurs well after the call is terminated at the ISP. Pac-West demonstrates that traffic which occurs after the call is terminated at the

⁸ See Pacific Bell's Memorandum of Points and Authorities at 13.

⁹ *Id.* at 5.

¹⁰ *Id.* at 7.

ISP has never been deemed a part of regulated interstate communications.¹³ Thus, ISPs are, in essence, considered end-users.¹⁴ These points were recently emphasized by the Public Utilities Commission of Texas when it analyzed the multiple components of Internet Service:

The Commission agrees with the FCC's view that the provision of Internet service via the traditional telecommunications network involves multiple components. One component is the information service—the content—which appears to consist of a significant amount of non-local traffic. The network component, however, is the carrier-to-carrier and carrier-to-end-user telecommunications transmission component, which in the case of a call between two end-users in the same local calling area is local traffic.¹⁵ (citations omitted)

C. Authorities in Other Jurisdictions have Unanimously found that Intrastate Calls Terminated at ISP's are Local Calls.

Although the Commission is not bound by Commission decisions in other jurisdictions, they are instructive here, if for no other reason, than for the fact that every single state commission that has ruled on this issue has found that reciprocal compensation rates apply to local calls terminating at ISP end-users.¹⁶ Similarly, the

¹³ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (codified as amended, 47 U.S.C. §§ 201 et seq. ("1996 Act").

¹⁴ See Pacific's Memorandum of Points and Authorities at 15.

¹⁵ Pac-West correctly tracks the history of ISP regulation which illustrates the difference in regulation between ISP traffic and traffic carried on traditional exchanges. See Pac-West's Memorandum of Points and Authorities at 15-21.

¹⁶ *Id.* at 15.

¹⁷ *Complaint and Request for Expedited Ruling of Time Warner Communications*, Order of Texas PUC, Docket No. 18082 (rel. March 2, 1998), citing, FCC, *Report and Order on Universal Service*, CC Docket No. 96-45, FCC 97-157 at ¶ 83 (May 8, 1997).

¹⁸ See e.g. *supra*, note 15, Texas PUC, Docket No. 18082 (rel. March 2, 1998); *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Service Provider Traffic*, Decision of Connecticut PUC, Docket No. 97-05-22 (rel. September 17, 1997); *Petitions of AT&T Communications of the Midwest, Inc., MCI Metro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with US WEST Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Decision of Minnesota PUC Docket No. P442, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729, 1996 Minn. PUC LEXIS 161 at *171 (rel. December 6, 1996); *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, New York Public Utilities Commission Order Denying Petition and Instituting

National Association of Regulatory Utility Commissioners ("NARUC") passed a Resolution in November stating that ISP traffic should remain subject to state jurisdiction.¹⁷ Finally, it is noteworthy that Pacific itself treats calls between its end-users and its own ISP customers as local calls and charges local rates to its customers for such calls.¹⁸

III. CONCLUSION

The law is clear that calls made by Pacific's end-users and terminated at ISPs on Pac-West's network are intrastate calls and subject to reciprocal compensation. It is anticompetitive for Pacific to reclassify such traffic for competitors that it classifies for itself as local.

For all the reasons stated above, MCI supports Pac-West's Motion for Summary Judgment and opposes Pacific's Motion.

Respectfully submitted this 13th day of March, 1997.

By: 
Nikayla K. Nail Esq.
Regulatory Manager
Western Public Policy Group
MCI TELECOMMUNICATIONS CORPORATION
201 Spear Street, 9th Floor
San Francisco, CA 94105
Telephone: (415) 228-1150
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Proceeding, Case No. 97-C-1275 (rel. June 10, 1997); *Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, Oregon Public Utilities Commission Order, Case No. 96-324 (rel. December 9, 1996); *In the Matter of Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications Company, Inc. Pursuant to 47 USC Section 252*, Washington Utilities and Transportation Commission Order, Docket No. UT-960323 (rel. November 8, 1996).

¹⁷ Resolution #97C-7, Adopted November 11, 1997.

¹⁸ Pac-West's Undisputed Facts at ¶14.

CERTIFICATE OF SERVICE

I, Dorothy L. Maddux certify that the following is true and correct:


I am a citizen of the United States, State of California, am over eighteen years of age, and am not a party to the within cause.

My business address is 201 Spear Street, 9th Floor, San Francisco, California, 94105.

I hereby certify that I have this day caused the foregoing attached **RESPONSE OF MCI TELECOMMUNICATIONS CORPORATION (U 5011 C) IN SUPPORT OF THE MOTION FOR SUMMARY JUDGMENT BY PAC-WEST TELECOMM, INC. AND IN OPPOSITION TO PACIFIC BELL'S MOTION FOR SUMMARY JUDGMENT** to be served upon all parties by regular mail, postage prepaid, upon each person on the enclosed service list.

Executed this 13th day of March, 1998, at San Francisco, California.

MCI TELECOMMUNICATION CORPORATION
201 Spear Street, 9th Floor
San Francisco, CA 94105
(415) 228-1245


Dorothy L. Maddux

March 13, 1998

Service List for C.97-11-034

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March 13, 1998

1. My name is Eugene Springfield. I am over the age of twenty-one and in all other respects competent to make this affidavit, which is based upon my personal knowledge.
2. I am currently employed by Southwestern Bell Telephone Company (SWBT) as Executive Director-Tariffs, Regulatory & Network. In 1996, I was responsible, on behalf of SWBT, for negotiating portions of an interconnection agreement between SWBT and MFS Communications Company, Inc. (MFS) for Missouri. My specific area of responsibility included negotiating the rates, terms and conditions applicable to intercompany compensation for the exchange of traffic, and in particular, reciprocal compensation for "Local Traffic" as defined in the interconnection agreement between SWBT and MFS.
3. During the interconnection negotiations between SWBT and MFS, representatives of MFS never mentioned treating interstate enhanced services traffic as "Local Traffic" for which reciprocal local compensation would be paid. Based on the long history of the FCC's access charge exemption for enhanced service providers, I was aware in 1996 that the FCC considered enhanced services, including Internet services, to be interstate, interexchange services to which interstate access charges would apply, but for the FCC's exemption.

4. Had MFS taken the position during its interconnection negotiations with SWBT that interstate Internet traffic should be included in the definition of "Local Traffic" contained in the agreement, and that the parties should therefore pay each other reciprocal local compensation for Internet traffic as if it were local traffic and not interstate, interexchange traffic, I would not have agreed on behalf of SWBT to include such a provision in the interconnection agreement. Had MFS demanded such a reclassification of Internet traffic, SWBT would not have agreed to it, and if MFS wanted to arbitrate that issue, it certainly could have done so. SWBT's position in that arbitration would have been that Internet traffic is interstate, interexchange traffic for which reciprocal local compensation is not applicable.
5. The definition of "Local Traffic" which the parties agreed to in the final interconnection agreement between SWBT and MFS does not include Internet traffic originated by a SWBT end user and carried by MFS to an Internet Service Provider. SWBT specifically insisted that "Local Traffic" be defined to include only such traffic which originates and terminates in a local calling scope. As the FCC has found, Internet traffic does not terminate locally.

Further affiant sayeth not.

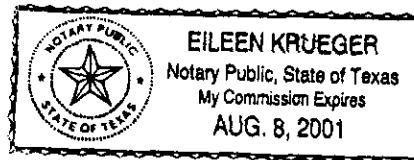
Eugene F. Springfield
Eugene F. Springfield

Eugene F. Springfield, being duly sworn appeared before me and stated that the foregoing statements are true and correct to the best of his knowledge.

Subscribed and sworn to before me this 8th day of October, 1999.

Eileen Krueger
Notary Public

My Commission Expires: 8/8/01





January 20, 1998

Ken Moran, Chief
Accounting & Audits Division
Federal Communications Commission
2000 L Street, NW, Room 812
Washington, DC 20554

Re: Jurisdictional Separations Adjustments - Internet Usage

This is to advise you of action we are taking with regard to jurisdictional separations data for Southwestern Bell Telephone Company (SWBT), Pacific Bell, and Nevada Bell, as it relates to Internet traffic volumes and 1997 reported results.

As you know, with the phenomenal growth of Internet/Internet Service Provider (ISP) usage in recent years, the jurisdictional nature of Internet traffic has quickly become a significant issue. Initially, this usage which is originated and transported by SWBT to a CLEC appeared to be "local exchange" (like Feature Group A usage) and seven-digit dialed. Due to a lack of switch measurement capabilities previously in place, and prior to the rapid growth of Internet traffic volumes, this usage residually defaulted to "local" or "other" for separations study purposes. However, due to the significant growth of this traffic, SBC Communications Inc. (SBC) implemented procedures to identify this usage and jurisdictionally reclassify it in separations.

As we are able to identify Internet traffic, SBC is adjusting Part 36 jurisdictional traffic volumes to assign this usage to interstate (i.e., as in the case of FGA, usage is identified, removed from "local," and assigned to interstate or intrastate access). This classification of Internet usage is consistent with a) the FCC having asserted jurisdiction over ISP usage, b) the nature of the origination/termination characteristics of the traffic, and c) current Part 36 practice and industry procedures relating to the treatment of other "contaminated" services which are assigned to interstate. In other words, in keeping with the principle that where it is difficult to determine the jurisdiction of the traffic using a particular service through measurements or reporting, the service is considered "contaminated" (a service handling both interstate and intrastate calls) and may be directly assigned to interstate if the end-to-end interstate usage is more than ten percent of the total usage of the service (CC Docket Nos. 78-72 and 80-286, Decision and Order, released July 29, 1989).

Page Two
January 20, 1998
Ken Moran, Chief
Accounting & Audits Division

These procedures have been implemented starting in 1997, going forward. However, for that Internet traffic which existed prior to 1997, SBC has no appropriate means to go back and retroactively capture such usage or adjust prior years' separations data. Therefore, any jurisdictional data previously reported prior to 1997, via ARMIS 01, 03, and 04 Reports may be slightly misstated in that ISP traffic was originally identified as intrastate (local) for separations and reporting purposes, instead of interstate, as discussed above.

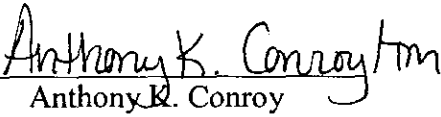
Please feel free to call me at 202-326-8894 or Mr. Paul Cooper at 320-235-8111 should you have any questions or if further information is required.

Sincerely

BJ Baumgartner

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on October 13, 1999.


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