



**MCI Communications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006

**EX PARTE OR LATE FILED**

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**NOV 19 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 19, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

EX PARTE

Re: CC Docket Nos. 96-98; 98-79; 98-103/98-161; CCB/CPD 97-30

Dear Ms. Salas:

Please include the following letter to Chairman Kennard and the FCC Commissioners in the above referenced docket.

Very truly yours,

Bradley Stillman  
Senior Policy Counsel



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Corporation**

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Washington, DC 20006

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

November 19, 1998

William Kennard, Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

EX PARTE

Re: CC Docket Nos. 96-98; 98-79; 98-103; 98-161; CCB/CPD 97-30

Dear Chairman Kennard:

As the Commission deals with the jurisdictional questions surrounding dial-up calls terminating to information service providers (ISPs), MCI WorldCom believes the Commission must make clear that reciprocal compensation must continue to be paid for traffic exchanged between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) serving ISPs as end user customers. The financial consequences for CLECs, and ultimately the customers of CLECs and ISPs alike, are grave if the Commission stays silent on this issue.

The attached documents offer one concrete demonstration why the Commission must do all that it can to remove any ambiguity concerning the validity of existing reciprocal compensation arrangements. These documents include an unsolicited proposed settlement offer from BellSouth to MCI WorldCom's MCI Access Transmission Services, Inc. division, and MCI WorldCom's written response. Although BellSouth's cover letter of November 5, 1998 claims a negotiation and an agreement to keep discussions confidential, MCI WorldCom's response clearly indicates that it neither entered into any negotiation, nor agreed to keep any discussions or materials confidential.

Under the terms of the proposed settlement, BellSouth would agree to pay its outstanding debts owed for reciprocal compensation for ISP traffic under the companies' interconnection agreement at no more than 15 cents on the dollar. The offer was only valid if agreed to before 12:00 noon on Thursday November 5, 1998, or before the Commission released an order addressing reciprocal compensation for ISP traffic.

As you can see from these documents, concerns of MCI WorldCom and other CLECs are not at all unfounded. BellSouth, and undoubtedly other ILECs, are eager to take advantage of any uncertainty or ambiguity surrounding these questions in order to wreck havoc on existing contractual arrangements with CLECs. The Commission's failure to articulate, clearly and unequivocally, that all reciprocal compensation obligations must be fully met will create very serious consequences for CLECs, in terms of both continuing and maintaining current operations and meeting business plans by raising necessary capital to build out networks.

As related in previous filings and correspondence, MCI WorldCom's position on the question of the jurisdiction of calls terminating to ISPs, and ILEC obligations to pay CLECs for such calls, is clear. As it is impossible to "call the Internet" directly, MCI WorldCom maintains that only one call is involved -- from the end user to the ISP -- with the ISP subsequently providing enhancements necessary to route these calls either locally, or over separately-purchased interstate facilities to the Internet. In short, the entire transmission consists of one local exchange call and a jurisdictionally separate and distinct interstate or intrastate information service.

Should the Commission not adopt MCI WorldCom's view of the jurisdictional nature of traffic terminating to ISPs, in the alternative MCI WorldCom supports the so-called "mixed jurisdiction" legal theory espoused in recent *ex parte* letters filed by ITAA and ALTS (Letter from Jonathan Nadler to William Kennard, CC Docket No. 96-98, November 5, 1998, at 2-4; Letter from Jonathan Canis to Magalie Salas, CC Docket No. 96-98 et al, November 13, 1998, attachment at 1-2 ). Under this theory, because traffic to ISPs is both jurisdictionally mixed (interstate and intrastate) and inseverable, the FCC can assert federal authority over dial-up ISP-bound traffic, while at the same time deferring to decisions by state public service commissions -- including those concerning reciprocal compensation -- which do not negate valid federal policies. As a result, the Commission can state unequivocally that the decisions of 24 state commissions requiring the ILECs to pay reciprocal compensation are to be left undisturbed by any jurisdictional ruling.

However the Commission decides these important legal and jurisdictional questions with respect to dial-up traffic to ISPs, the larger goal should not be lost. MCI WorldCom urges the Commission to make crystal clear that, at minimum, the decisions of 24 state commissions obligating the ILECs to pay reciprocal compensation under existing interconnection agreements are not to be disturbed.

Please feel free to contact me should you have any questions.

Very truly yours,



Bradley Stillman  
Senior Policy Counsel

encl.

cc Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Harold Furchtgott-Roth  
Commissioner Gloria Tristani  
Katherine Brown  
Lawrence Strickling



**MCI Telecommunications  
Corporation**

Two Northwinds Center  
2520 Northwinds Parkway  
Alpharetta, GA 30004

November 5, 1998

**Pat Finlen  
BellSouth Telecommunications, Inc.  
Room 34S91 BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375**

**Dear Mr. Finlen:**

This is in response to your letter and accompanying settlement agreement dated November 5, 1998 regarding reciprocal compensation for ISP traffic.

MCI<sub>m</sub> finds your proposed settlement unacceptable. MCI<sub>m</sub> fully expects BellSouth to pay 100% of what it owes MCI<sub>m</sub> for reciprocal compensation of ISP traffic as called for by the Interconnection Agreements between BellSouth and MCI<sub>m</sub>. MCI<sub>m</sub> would also expect BellSouth to pay, as part of our normal business practices, any interest or late fees.

In addition, the statement in your letter that we agreed to keep negotiations on this issue confidential is inaccurate. In the first place, we did not enter into negotiations; BellSouth simply communicated an offer that MCI<sub>m</sub> has rejected. More importantly, we did not agree to keep our communications confidential. MCI<sub>m</sub> reserves the right to disclose those communications as it deems appropriate.

Sincerely,

**Walter J. Schmidt  
SrMgr - Carrier Agreements  
Eastern Financial Operations**

**Cc: Marcel Henry, MCI<sub>m</sub>  
Daren Moore, MCI<sub>m</sub>  
Jerry Hendrix, BellSouth**



BellSouth Telecommunications, Inc.  
Room 34591 BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

November 5, 1998

Wally Schmidt  
MCI  
Two Northwinds Center  
5th Floor  
2520 Northwinds Parkway  
Alpharetta, GA 30004

Dear Mr. Schmidt:

Enclosed is an agreement for your review. In accordance with our agreement to keep this negotiation confidential, please do not disclose this document or the contents of this document to any third party.

This agreement represents an offer which will remain open until either 12:00 noon ET on Thursday, November 5, 1998, or until the FCC releases an order addressing reciprocal compensation for ISP traffic, whichever is earlier. This agreement, signed by MCImetro Access Transmission Services, must be received by me no later than 12:00 noon ET on Thursday, November 5, 1998 if MCImetro Access Transmission Services elects to execute the agreement.

Sincerely,

Pat Finlen  
Manager - Interconnection Services

Attachment

Cc: Jerry Hendrix

**CONFIDENTIAL**  
**SETTLEMENT AGREEMENT**

This Confidential Settlement Agreement ("Settlement Agreement") is made and entered into this 5<sup>th</sup> day of November, 1998, by and between BellSouth Telecommunications, Inc. ("BellSouth") on its own behalf and on behalf of its past, present and future agents, employees, affiliates, successors, subsidiaries, parent company, and anyone claiming for the benefit of any of them, and MCI<sub>in</sub> Access Transmission Services, Inc. ("MCI<sub>in</sub>") as more fully defined herein.

**Definitions**

"MCI<sub>in</sub>" means MCI<sub>in</sub> Access Transmission Services, Inc., its past, present and future agents, fiduciaries, representatives, employees, predecessors, successors, assigns, insurers, executors, and anyone claiming for the benefit of any of them.

The "Subject Cases" means any regulatory proceeding, civil action, criminal action, appeal, or arbitration in which MCI<sub>in</sub> is either a party or intervenor.

The "Interconnection Agreement" means the contracts entered into between BellSouth and MCI<sub>in</sub> on December 27, 1998 for Alabama, June 3, 1997 for Florida, March 7, 1997 for Georgia, August 8, 1997 for Kentucky, August 9, 1997 for Louisiana, August 7, 1997 for Mississippi, April 22, 1997 for North Carolina, August 7, 1997 for South Carolina, and April 4, 1997 for Tennessee.

"The Parties" means BellSouth and MCI<sub>in</sub>.

**Representations, Terms and Conditions**

**WITNESSETH:**

**WHEREAS**, MCI<sub>in</sub> is involved in the Subject Cases alleging that BellSouth breached the Interconnection Agreement by failing to pay reciprocal compensation for ISP traffic, and;

**WHEREAS**, BellSouth denies that it owes reciprocal compensation under the terms of the Interconnection Agreement as ISP traffic is interstate in nature, and;

**WHEREAS**, The Parties desire to terminate the multiple legal proceedings arising out of The Parties' respective interpretations of the Interconnection Agreement, and reach a full and final compromise of all matters and issues in the Subject Cases, and;

**WHEREAS**, the Federal Communications Commission ("FCC"), on October 30, 1998, issued a Memorandum Opinion and Order in which it held that an ADSL tariff offering filed by

GTE was interstate in nature and indicated that it would release an order within the week as to whether ISP traffic is interstate in nature, and;

WHEREAS, The Parties anticipate that the FCC will rule on the reciprocal compensation for ISP traffic issue in the immediate future, and;

WHEREAS, The Parties seek to establish a new working relationship going forward;

NOW, THEREFORE, in consideration of the mutual agreements, undertakings and representations contained herein, the payment of the amounts set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, The Parties agree as follows:

#### **Specific Terms**

BellSouth will pay fifteen (15) percent of the total amount BellSouth withheld from payment to MCI<sub>m</sub> for reciprocal compensation from the inception of the Interconnection Agreement through September 30, 1998. The term of this Settlement Agreement is for the life of the existing Interconnection Agreement, which expires on March 6, 2000. Even if the term of the Interconnection Agreement is extended, or MCI<sub>m</sub> adopts another Interconnection Agreement with a longer term than MCI<sub>m</sub>'s, the term of the Settlement Agreement cannot be extended beyond the Interconnection Agreement's current expiration date of March 6, 2000. Through September 30, 1998, this fifteen (15) percent amount that BellSouth will pay to MCI<sub>m</sub> is \$1,445,847.

MCI<sub>m</sub> hereby accepts \$1,445,847 as full and final payment of all outstanding amount's billed by MCI<sub>m</sub> to BellSouth for reciprocal compensation from the inception of the Interconnection Agreement through and including September 30, 1998. Any other claims for reciprocal compensation during this period are waived by MCI<sub>m</sub>.

For reciprocal compensation bills submitted by MCI<sub>m</sub> between September 30, 1998, and the current expiration date of the Interconnection Agreement, BellSouth will pay fifteen (15) percent of the total amount billed. BellSouth's monthly payments to MCI<sub>m</sub> subsequent to September 1998 cannot exceed one hundred ten percent (110%) of the amount paid by BellSouth for the month of September 1998.

#### **FCC Proceedings**

The Parties agree that the Settlement Agreement will not be affected by subsequent FCC decisions. In fact, The Parties enter into this Settlement Agreement anticipating that the FCC will issue a subsequent decision on the ISP traffic issue. The Parties are free to participate in any FCC proceeding opened to consider the appropriate treatment of ISP traffic, or to appeal any FCC decision.

#### **No Admission of Liability**

The Parties accept the consideration exchanged herein as a complete compromise of matters involving disputed issues of law and fact and assume the risk that the facts or law may be otherwise than they believe. It is understood and agreed between The Parties that this settlement is a compromise of disputed claims, and any payment, credit or refund is not to be construed as an admission of liability on the part of either of The Parties, and by whom liability is expressly denied. In addition, The Parties agree that any payment made pursuant to the Settlement Agreement is not a reciprocal compensation payment for ISP traffic.

#### **Payments and Refunds**

Any payments due under the terms of the Settlement Agreement will be made within sixty (60) days of the date the Settlement Agreement is executed. Payments will be made in accordance with the normal business practices between The Parties.

#### **Dismissal of the Subject Cases**

Within ten (10) days of the payment of the amounts due pursuant to this Settlement Agreement, counsel for MCI<sup>m</sup> will dismiss any pending Subject Cases. In the event MCI<sup>m</sup>'s status in any of the Subject Cases is that of an intervenor, it will withdraw from the Subject Case within ten (10) days.

#### **Discovery Ongoing**

The Parties acknowledge, understand and agree that this Settlement Agreement was entered into and executed while discovery was ongoing in the Subject Cases and that discovery was not complete, including the depositions of witnesses, production of documents, answering of interrogatories and all other forms of discovery available in civil actions. The Parties represent and warrant that notwithstanding the foregoing, each of them received all information necessary and prudent to independently, and without reliance on the other, make the decision to enter into this Settlement Agreement and acknowledge that neither party has made any representations or warranties except as set forth in this Settlement Agreement.

#### **Attorney's Fees and Costs**

With the exception of those costs set forth above, The Parties agree to bear their own attorney's fees and costs incurred in each of the Subject Cases.

#### **Warranty of Capacity to Execute Agreement**

The Parties represent and warrant that each has the sole right and exclusive authority to execute this Settlement Agreement and to receive payments or refunds in settlement of the Subject Cases; and that neither of The Parties has sold, assigned, transferred, conveyed, promised, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

### **Confidentiality**

The Parties agree that this Settlement Agreement and its terms, including without limitation, the amount of the payments, refunds, credits or assessments set forth above, are and shall be kept confidential between The Parties. Except to the extent that either of The Parties reasonably believes it is required to disclose certain of the terms of this Settlement Agreement to its stockholders, or in the filings with the Securities and Exchange Commission, the state regulatory body, or to others (exclusive of the news media) in connection with its business affairs; or to the extent that either of The Parties is required to disclose the terms of its individual settlement to the taxing authorities or others with respect to tax matters; or to the extent required by subpoena or other order of a court of competent jurisdiction; the terms and conditions of this Settlement Agreement, including the amounts of any payments, refunds, credits or assessments shall remain confidential and shall not be disclosed. In the event of issuance of a subpoena, MCI will immediately notify counsel for BellSouth. The Parties and their counsel agree that they will not comment on the substance or terms of this Settlement Agreement, or disclose or reveal directly or indirectly any terms of this Settlement Agreement to any person or entity unless written consent is given by the other, except to the effect that the Subject Cases were resolved amicably, that The Parties and their counsel are bound by the limitations of this Settlement Agreement, and as set forth in this paragraph.

The Parties and their counsel and their representatives specifically consent to this strict confidentiality and shall not disclose, other than as may be mutually agreed to in writing, any of the terms or conditions of this Settlement Agreement. This Settlement Agreement shall not be filed in any of the Subject Cases unless necessary for enforcement purposes.

### **Entire Agreement and Successors in Interest**

This Settlement Agreement, along with any other documents specifically referenced as Exhibits herein, reflects the entire agreement and understanding between The Parties with respect to the settlement contemplated herein, supersedes all prior agreements, arrangements, understandings, communications, representations or warranties, both oral and written, related to the subject matter hereof, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, assigns, and successors of each.

### **Severability of Provisions**

The Parties agree that any provision of this Settlement Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

### **Governing Law**

This Settlement Agreement including all matters of construction, validity and performance shall be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia without giving effect to the choice of law or conflicts of law provisions thereof.

### **Additional Documents**

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

### **Counterparts**

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **Advice of Counsel / Reading of Agreement**

The Parties acknowledge, represent and warrant that each has been fully advised by its attorney(s) concerning the execution of this Settlement Agreement, that each has fully read and understands the terms of this Settlement Agreement, and that each has freely and voluntarily executed this Settlement Agreement. The Parties acknowledge, represent and warrant that each relies wholly upon its understanding of this Settlement Agreement, that each has been represented by counsel in connection herewith, and that it enters into this Settlement Agreement of its own free will without reliance upon any statement, inducement, promise or representation of the other party or anyone else not fully expressed herein.

IN WITNESS THEREOF, The Parties have duly executed this Settlement Agreement as of the day and year first above written.

\_\_\_\_\_  
**MCI Access Transmission Services, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**BellSouth Telecommunications, Inc.**

By: \_\_\_\_\_

Name: Jerry D. Hendrix

Title: Director-Interconnection  
Services/Pricing

Date: \_\_\_\_\_