

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

PETITION FOR ARBITRATION OF	§	
INTERCONNECTION RATES, TERMS	§	
AND CONDITIONS AND RELATED	§	
ARRANGEMENTS WITH ILLINOIS	§	DOCKET NO. 04-0469
BELL TELEPHONE COMPANY	§	
PURSUANT TO SECTION 252(b) OF	§	
THE TELECOMMUNICATIONS ACT	§	
OF 1996	§	

**REBUTTAL TESTIMONY OF DENNIS L. RICCA
ON BEHALF OF
MCImetro Access Transmission Services LLC
MCI WorldCom Communications, Inc. and
Intermedia Communications LLC**

EXHIBIT 11.0

DATED: August 24, 2004

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1 **INTRODUCTION**

2 **Q. Please state your name, your employer, your business address and on**
3 **whose behalf you are offering this testimony.**

4 A. My name is Dennis L. Ricca. I am employed by MCI, Inc. as a senior staff
5 member in the finance department. My business address is 2655 Warrenville
6 Road, Downers Grove, Illinois 60515.

7 **Q. Are you the same Dennis L. Ricca who provided Initial Testimony in this**
8 **Docket?**

9 A. Yes, I am.

10

11 **PURPOSE OF TESTIMONY**

12 **Q. What is the purpose of your testimony?**

13 A. The purpose of this testimony is to address new issues raised in the testimony of
14 SBC witnesses McPhee, Albright and Kirksey. I demonstrate that many of these
15 issues have not been discussed nor were they necessarily anticipated by MCI in
16 the negotiations process. I also demonstrate that SBC's positions on these
17 issues should be rejected and that the Administrative Law Judges ("ALJs") and
18 the Illinois Commerce Commission ("Commission") should direct that the
19 reciprocal compensation and transit traffic language proposed by MCI and
20 reflected in the interconnection agreement ("ICA") and associated appendices
21 attached to MCI witness Price's testimony and in Exhibit 11.1 to this testimony be
22 incorporated into the MCI/SBC ICA that will be submitted to the Commission for
23 approval.

24 **Q. How is your testimony organized?**

25 A. I address each issue presented by each witness in the order that the witness
26 addressed the issues. Where more than one SBC witness addressed an issue, I
27 respond to all witnesses on that issue before proceeding to the next issue.

28

29 **DISCUSSION**

30 **Direct Testimony of SBC witness J. Scott McPhee**

31 **Calling Scopes and Traffic Definitions**

32 ***1a. What are the appropriate classifications of traffic that should be***
33 ***addressed in the Reciprocal Compensation Appendix?***

34 ***1b. What is the proper definition and scope of §251(b)(5) Traffic and***
35 ***ISP-Bound Traffic in accordance with the FCC's ISP***
36 ***Terminating Compensation Plan?***

37 ***1c. Is Section 251(b)(5) reciprocal compensation limited to traffic***
38 ***that originates and terminates within the same ILEC local***
39 ***calling area?***

40 ***1d. Is it appropriate to define local traffic and ISP-bound traffic in***
41 ***accordance with the ISP Compensation Order?***

42 ***5a: What is the appropriate treatment and compensation of ISP***
43 ***traffic exchanged between the Parties outside of the local calling***
44 ***scope?***

45 ***5b: What is the appropriate routing and treatment of ISP calls on an***
46 ***Inter-Exchange basis, either IntraLATA or InterLATA?***

47

48

49 **Q. At pages 4-12, SBC witness Mr. McPhee discusses various issues related**
50 **to reciprocal compensation for ISP traffic, including ISP traffic that is**
51 **virtual FX (“vFX”) in nature. He also discusses vFX issues for non-ISP**
52 **local calls. Does any of Mr. McPhee’s testimony raise “new” issues?**

53

54 A. Yes, SBC witness Mr. McPhee’s testimony presents a number of issues not
55 addressed in MCI’s Reciprocal Compensation Decision Point List (“DPL”) or
56 proposed contractual language.

57 **Q. In his testimony, Mr. McPhee claims that the terminology he uses is**
58 **consistent with terminology that the Federal Communications Commission**
59 **uses. Do you agree?**

60 A. No. Mr. McPhee claims that “SBC Illinois proposes to use terminology that is
61 consistent with the FCC’s ISP Remand Order.” (Direct Testimony of J. Scott
62 McPhee, p. 4, lines 85-86) According to Mr. McPhee, SBC merely wishes “to
63 avoid future disputes over call classification by using definitions that comport with
64 the current FCC rules.” (McPhee Direct, p. 6, lines 118-119)

65 **Q. Do you agree with Mr. McPhee’s characterization of SBC’s proposal?**

66 A. No, I do not, and his testimony raises a number of issues that I did not address in
67 my direct testimony. The FCC’s ISP Remand Order did not require that ISP
68 traffic compensated under that order be delivered to an ISP provider “physically
69 located within the same ILEC local exchange area,” as suggested by Mr.
70 McPhee. (McPhee Direct, p. 4, line 91 and p. 6, lines 120-125) Mr. McPhee’s
71 inaccurate reading of the FCC ISP Order is then used as the foundation for his
72 claim that, “To fall within the definition of ISP bound traffic subject to the FCC
73 Plan, the calls must originate from an end user and terminate to an ISP
74 physically located within the same ILEC mandatory calling area.”

75 Mr. McPhee’s claims are clearly wrong when viewed within the context of
76 other FCC orders. Instead of relying on Mr. McPhee’s interpretation of the ISP
77 Remand Order, the ALJs and the Commission should look to the FCC as the
78 best interpreter of its own rules and orders. In the Virginia Arbitration Order,¹ the

¹ *In re Petition of WorldCom, Inc.*, 17 F.C.C.R. 27039 (FCC Wireline Competition Bureau July 17, 2002) (“*Virginia Arbitration Order*”), *applications for review pending*.

79 FCC interpreted its ISP reciprocal compensation rules to apply to ISP traffic that
80 would be classified by SBC's definitions as vFX ISP traffic. To be clear, the
81 definitions ascribed to the terms used by SBC's witnesses would achieve SBC's
82 *goals*, but would not necessarily lead the ICA to "comport with the current FCC
83 rules," as Mr. McPhee suggests.

84 At page 5, lines 100-101, Mr. McPhee cites the FCC's conclusion in its
85 ISP Remand Order that traffic bound for ISPs is not Section 251(b)(5) traffic. Mr.
86 McPhee ignores that the D.C. Circuit Court Decision that he cites in footnote 2,
87 page 4, (*Worldcom, Inc.*), specifically rejected this portion of the FCC's
88 conclusion, finding that the decision of the FCC was based on faulty reasoning.

89 At page 6, lines 116-117, Mr. McPhee states that "Just because a number
90 looks local does not make it a local call..." This is a good indicator of SBC's
91 overriding view of classification of traffic. After passage of the
92 Telecommunications Act of 1996, there was general agreement among the
93 industry that, for Inter-carrier compensation purposes, traffic could be categorized
94 into three types: local, intrastate switched access, and interstate switched
95 access. Of course, these types of traffic are distinguished on the basis of tariff
96 distinctions that existed and made sense when SBC and other Incumbent Local
97 Exchange Carriers ("ILECs") were legally protected monopolies. However, there
98 is no sound economic reason for treating these classes of traffic differently for
99 purposes of inter-carrier compensation. Furthermore, the charging of different
100 rates for each traffic "type" creates additional complexity for, and adds costs to,

101 CLECs' billing systems and is used by SBC to force the CLECs into network
102 architecture decisions that SBC tacitly acknowledges to be inefficient.

103 **Q. Reciprocal Compensation for inter-switch and intra-switch UNE-P calls is**
104 **discussed by Mr. McPhee at page 9, line 184 through page 11, line 239. Did**
105 **MCI discuss with SBC the reasons cited by Mr. McPhee for SBC's positions**
106 **at this portion of his testimony while negotiating contractual language**
107 **related to reciprocal compensation and prior to filing its Petition for**
108 **arbitration?**

109
110 A. No. I noted this lack of discussion in my Direct Testimony. (Ricca Direct, p. 8,
111 lines 207-210, 223 and p. 9 line 227) This is the first time I have seen the
112 arguments set forth by Mr. McPhee concerning SBC's proposed arrangement. I
113 am MCI's subject matter expert and was a party to negotiations between MCI
114 and SBC concerning reciprocal compensation, billing and invoicing and network
115 architecture related to reciprocal compensation. This is the first time SBC has
116 raised these issues, I address them below.

117 **Q. Do you agree with SBC's position in this regard?**

118 A. No, I do not. Mr. McPhee's main point here for differentiating between the two
119 types of calls is his assertion that for intra-switch UNE-P terminations:

120 there is no "first point of switching on the other Party's network,"
121 and as such, no reciprocal compensation applies. There is nothing
122 for the "terminating carrier" to recover. (McPhee Direct, p. 11, lines
123 237-39)

124
125 This, however, is clearly not the case.

126
127 MCI pays for the switching for all calls originating from and terminating to
128 its customers served via the Unbundled Network Element Platform ("UNE-P").
129 MCI's first point of switching is in the same switch that the call originates. MCI

130 pays SBC for the unbundled local switching through SBC's switch port charge,
131 and both the switch and switch port are used to terminate the call to MCI's UNE-
132 P customer. MCI, therefore, is entitled to the reciprocal compensation that goes
133 with that switching when calls terminate to that customer. For all of the reasons
134 set forth in my direct testimony (Ricca Direct, p. 8) and those that are necessarily
135 for the first time presented here, I urge the ALJs and the Commission to reject
136 SBC's position on this issue.

137 **Q. What about Mr. McPhee's statement at page 10, lines 210-212, that**
138 **regardless of how an end-to-end circuit is provided, the traffic over that**
139 **should be compensated the same as traffic that originates and/or**
140 **terminates via a facilities-based provider. Do you agree?**

141
142 A. Yes, I do. The payment of reciprocal compensation hinges on who provides the
143 switch(es) to terminate the call. In the case of UNE-P, or any unbundled
144 switching scenario, the Competitive Local Exchange Carrier ("CLEC") paying the
145 ILEC for the switch port (*i.e.*, the provider of the switch) is the correct entity to
146 whom reciprocal compensation is due, even for intra-switch calls, contrary to
147 SBC's proposal. For these reasons the ALJs and Commission should reject
148 SBC's latest attempt to further balkanize traffic types for purposes of
149 compensation.

150 **Q. At pages 20-28 of his testimony, SBC witness Mr. McPhee addresses**
151 **additional issues regarding Foreign Exchange or "FX" traffic. Does he**
152 **raise any new issues in this section of his testimony?**

153
154 A. Yes, he does. At page 22, lines 487-492, he states:

155 CLECs take the assigned NPA-NXX code and, without telling the
156 Code Administrator, deploy the NPA-NXX code in a switch miles
157 away from the city in which it was assigned. As described in Issue

158 #1, MCI seeks to have calls rated and compensated as local if
159 they are dialed as local, regardless of whether the end user is
160 physically located within the same mandatory local exchange.
161

162 Mr. McPhee's characterization sounds furtive and evil when CLECs
163 provide FX services, yet the conduct of the CLECs is no different under a virtual
164 FX scenario than is SBC Illinois' conduct when it assigns telephone numbers to
165 its own FX customers. SBC does not tell the Code Administrator when it makes
166 such an assignment and SBC expects and has consistently billed MCI's
167 terminations to these FX customers as local service reciprocal compensation
168 rates. Mr. McPhee seems to be making much of the fact that when SBC
169 provides an FX service, it assigns the NXX to the switch where it is rated and
170 then sends the traffic to the distant third party via a private line. He seems to
171 attempt differentiation by noting, correctly, that CLECs do not send the call to a
172 switch in the rate center assigned to the NPA-NXX.

173 LECs assign all of their NPA-NXXs to both a rate center and, in a separate
174 field, a switch that will handle the call when they enter their NPA-NXXs into the
175 LERG. MCI's vFX calls **are** terminated in the switch assigned to the NXX just as
176 SBC's FX calls are. The only difference here is that MCI does not have a switch
177 in every rate center and SBC does. SBC's serving switch and rate center are
178 always the same for its NXX codes. This is not caused by the differences in
179 SBC's FX service and MCI's vFX service, but rather, by differences in networks
180 deployed by ILECs whose networks evolved over a century of government

181 protected monopoly status and CLECs, whose networks are less than one
182 decade old and emerged in a competitive environment.

183 Just as SBC first sends an FX call to its switch assigned to handle the
184 NPA-NXX and then sends it over a private line to a distant location, so also MCI
185 first sends an FX call to the switch assigned to handle the NPA/NXX and then
186 sends it over a *virtual private line* to a distant location. Thus, Mr, McPhee
187 identifies a difference without a distinction in his effort to have FX and vFX traffic
188 treated differently.

189 **Q. Mr. McPhee states at page 23 that the CLEC FX-like services create**
190 **“precisely the type of arbitrage and imbalanced competition that the FCC**
191 **and Illinois PUC have sought to avoid in the regulations surrounding**
192 **Intercarrier compensation.” Do you agree?**

193
194 A. I could not disagree more. CLECs’ use of vFX to meet customers’ service needs
195 is rooted in a sound business plan, and the offering is effectively the same as
196 SBC’s FX services.² SBC has not identified any minutes that it has terminated to
197 its own FX customers so that MCI could ensure these minutes were not billed by
198 SBC for reciprocal compensation, nor has it submitted bills to MCI for intrastate
199 switched access charges to MCI or provided MCI with any of the necessary
200 signaling information that would allow MCI to bill SBC switched access rates
201 when an MCI customer calls an SBC FX customer. Contrary to Mr. McPhee’s
202 testimony, SBC’s proposal would not result in CLECs and ILECs being treated
203 similarly, but is rather another example of SBC seeking to preclude CLECs from

² Nor, with all due respect, is virtual FX a “fiction” any more than SBC’s FX service is a fiction, despite this Commission’s conclusion to the contrary in the Level 3 Arbitration at 9-10.

204 providing competing telecommunications services in a manner different from
205 SBC. To ensure that MCI and SBC Illinois are treated in a similar manner, the
206 Commission should authorize MCI to collect reciprocal compensation for vFX
207 calls, just as SBC Illinois collects reciprocal compensation for FX calls.

208 Since passage of the Telecommunications Act of 1996, SBC has added to
209 the complexity of intercarrier compensation by urging further balkanization of
210 traffic. First, after losing battles concerning this issue before numerous state
211 commissions and courts and at the FCC, SBC finally prevailed in forcing “local”
212 compensation into two categories – ISP-bound traffic and non-ISP bound traffic.
213 In the AT&T Arbitration, SBC further persuaded this Commission to carve local
214 non-ISP vFX from the local mix and to set compensation for that traffic at a
215 different rate from local non-ISP non-vFX traffic. SBC also persuaded this
216 Commission to sever local vFX ISP from local non-vFX ISP traffic for different
217 compensation.

218 To summarize, local traffic has been sub-divided at SBC’s urging into local
219 non-vFX non-ISP-bound, local vFX non-ISP-bound, and local ISP-bound traffic.
220 Thus far, neither intrastate nor interstate switched access rates have been further
221 subdivided. Thus, there are now five categories of telecommunications traffic
222 where there were once three, and in this proceeding SBC advocates
223 perpetuation of these five.

224 This continued balkanization of telecommunications traffic is wholly
225 without economic or public policy rationale. There is no economic basis for

226 setting different compensation rates when SBC is entitled to recover only its
227 economic cost of terminating telecommunications traffic. Each succeeding
228 segregation of traffic means that a departure is required from the industry
229 standard practice of using the Local Exchange Routing Guide (“LERG”) to
230 determine routing and billing of telecommunications traffic. This makes billing
231 less precise and more costly. Billing is less precise because each step has
232 added to the complexity of billing systems that were already quite complex.
233 Billing is more costly because ever-increasing levels of complexity mandate
234 changes to billing software.. Because many of the various rates e.g., bill and
235 keep for only vFX and \$0.0007 for ISP traffic, are not cost based and add
236 unnecessary complexity and expense to intercarrier billing, the ALJs and the
237 Commission should take this opportunity to erase whatever distinctions within
238 “local traffic” are under their control.

239 **Q. Has the Commission previously indicated its conceptual support for**
240 **minimizing categories of minutes instead of further fractionizing them?**

241
242 **A.** Yes, it has. In fact, in the order in which it considered Ameritech’s so-called
243 Customer First Plan, the Commission explicitly set as a goal the “minute-is-a-
244 minute” concept, finding that “[u]ltimately, the same rates should apply for
245 termination regardless of the type of originating carrier, and we formally establish
246 that goal here.”³

³ IL.C.C. Docket Nos. 94-0096; 94-0117; 94-0146; 94-0301 Consolidated, ILLINOIS COMMERCE COMMISSION, 1995 Ill. PUC LEXIS 230 April 7, 1995, page 56.

247 If the Commission were to allow carriers to use the rating points of the
248 calling and called NPA-NXXs to determine the jurisdiction of calls, not only for
249 end user customer jurisdiction, as all carriers currently do, but also, consistent
250 with that determination, for compensation jurisdiction, it would simplify carriers'
251 rating of traffic and the number of categories of billed traffic would decrease to
252 the the number that existed prior to SBC's efforts to create additional categories
253 (i.e, vFX or non-vFX). Carriers still need to deal with the four categories of 1)
254 local non-ISP, 2) local ISP, 3) intrastate switched access and 4) interstate
255 switched access. And while four categories is too many, only the FCC can undo
256 the intercarrier compensation morass it created when it allowed SBC and the
257 other ILECs to distinguish between ISP and non-ISP local traffic. The ALJs and
258 the Commission should not further complicate this morass.

259 In addition, the Commission has in the past correctly recognized the
260 jurisdiction of this virtual FX traffic as local exchange traffic.⁴ Thus, there is no
261 reason to differentiate between local vFX and local non-vFX exchange service
262 traffic for reciprocal compensation payments. There is no difference in cost to
263 SBC to deliver the traffic; no difference to SBC in the revenue it collects from end
264 users to compensate it for the call; and, no difference in the Point of
265 Interconnection ("POI") to which SBC must deliver the traffic for termination on

⁴ "Also unconvincing is SBC's argument that this traffic really is toll traffic masquerading as local traffic. As noted by Staff, the Commission has consistently held that this [FX-type traffic] is local exchange traffic." (*AT&T Arbitration Decision*, Docket No. 03-0239, August 23, 2003, p. 34.)

266 the CLEC network. Most importantly, there are no economic or public policy
267 reasons on which to base the distinction SBC proposes. Therefore, the ALJs
268 and the Commission should reject SBC's arguments and instead adopt MCI's
269 position and the contract language that MCI proposed as reflected in Attachment
270 B to MCI's Petition.

271 **Q. Are there any other reasons that the Commission should streamline the**
272 **categories of traffic?**

273
274 A. Yes. Mr. Jason E. Constable, another SBC witness in this proceeding, succinctly
275 stated in a Texas arbitration proceeding that a guiding principle state
276 commissions should use in resolving: "Each company that shares in the routing
277 of the call deserves to be compensated." (Docket No. 28821, *Arbitration of Non-*
278 *Cost Issues for Successor Interconnection Agreements to the Texas* 271
279 *Agreement*, Constable Direct, p. 24, lines 19-20, pre-filed July 19, 2004) Mr.
280 Constable's Texas testimony is correct. In this context, one needs to recall why
281 reciprocal compensation arrangements are required by the Telecommunications
282 Act of 1996. That is, the originating carrier is reimbursed, through its local
283 service rates, for the costs of carrying the call to the called party. The
284 compensation paid to the terminating carrier is in recognition that, absent
285 reciprocal compensation, it would receive **no** compensation for its costs of
286 terminating the call to its customer. Precisely the same reason that justifies the
287 payment of reciprocal compensation should guide the ALJs and the Commission
288 in their determination of compensation for local ISP vFX and non-ISP vFX calls:
289 the originating carrier charges its local customer for the call based on the calling

290 and called NPA-NXX rating points; absent reciprocal compensation, the
291 terminating party receives no compensation for the call at all.

292 **Q. In SBC's case, doesn't it charge its FX customer the toll charge that would**
293 **otherwise have been paid by the calling party? (McPhee at p. 21)**

294 A. Yes, that is correct, and MCI does not charge SBC to deliver the call to the
295 distant exchange nor does it charge SBC terminating switched access. MCI's
296 reciprocal compensation rate would only charge SBC for the local switching and
297 termination charges that are applicable to all local traffic. MCI's charges to the
298 vFX customer in the distant exchange are a matter between MCI and that
299 customer.

300 **Q. Mr. MCPhee takes issue with the claim you made in your Direct Testimony**
301 **that this Commission has ruled only that FX voice traffic is subject to bill**
302 **and keep. Is Mr. MCPhee's complaint about your position warranted?**
303 **(McPhee Direct, p. 27, lines 608-616)**

304 A. Yes. I inadvertently included in my Illinois testimony an argument that I made in
305 testimony that I submitted in the Texas arbitration proceeding. The argument
306 was accurate with respect to Texas, but it is not accurate for Illinois. In Texas, the
307 Public Utilities Commission deferred to the FCC's Intercarrier Compensation
308 Order and used the FCC's Virginia Arbitration Order to determine that its
309 previous decision that both ISP and non-ISP vFX traffic should be compensated
310 at bill and keep should be modified to reflect the FCC's ISP Remand Order,
311 thereby removing the ISP-bound vFX traffic from the scope of its bill and keep for
312 vFX decisions. This Commission should do the same.
313

314 **FCC ISP Compensation Plan Issues**

315 **Q. Does SBC raise any new issues concerning ISP compensation issues in**

316 **SBC witness Mr. McPhee's direct testimony at pages 29-41?**

317
318 A. Yes, there are several new issues that are raised in this portion of Mr. McPhee's
319 direct testimony. In particular, Mr. McPhee addresses the application of the
320 FCC's ISP Remand Order Gross Cap on minutes for 2004. I addressed this
321 issue in my direct testimony in this docket (Ricca Direct, p. 43, line 972 and p. 46,
322 line 1027), noting that both parties specifically acknowledged in their 13-state
323 agreement that the ISP cap and the rate structure would not apply during the
324 term of the amendment. SBC should not now be heard to demand that the
325 minutes, which were not classified as ISP nor not-ISP from January 1 through
326 May 31, 2004, must now be retroactively classified and the ISP minutes count
327 towards the annual cap established by the FCC. This SBC would wreak havoc
328 with both the FCC ISP determination as well as the previous 13-State Agreement
329 between the parties. The ALJs and the Commission must reject it.

330 **Q. Is there any other alternative besides the all or nothing approach currently**
331 **advocated by SBC and MCI?**

332
333 A. Yes, there is. Just as SBC's position unfairly counts minutes of use that were
334 never classified as ISP toward the ISP cap, MCI's position of not counting any of
335 those minutes towards the cap provides an entire annual cap and only seven
336 months of traffic to apply toward it. There is a better solution that is fair to both
337 parties: use the MCI position of counting minutes only beginning June 1, 2004
338 but adjust the annual cap by multiplying it by 7/12. This prorates the annual cap
339 over the seven months that it is effective and does not penalize SBC for not
340 starting the counting until June 1 for a cap that otherwise covers 12 months. MCI

341 would accept such a decision from this Commission.

342 **Q. Is there a new issue presented by SBC Intercarrier Compensation Issue 1d**
343 **and 10a (McPhee Direct, p. 38, line 862 and p. 39, line 883)?**

344
345 A. Yes, Mr., MCPhee misrepresents MCI's position here. At no time has MCI
346 indicated that it expects tandem switching and transport rates to apply to ISP
347 minutes now that SBC has invoked the protections of the FCC's ISP Remand
348 Order. MCI expects the compensation rate for ISP minutes below the gross rate
349 cap to be at the \$0.0007, regardless of whether the calls would otherwise qualify
350 for tandem compensation.

351 **Q. Does SBC raise new issues regarding its assertion that SBC has rebutted**
352 **the 3:1 presumption for ISP-bound traffic? (McPhee Direct, p. 36, lines 821-**
353 **828, p. 39, lines 884-41, 934)**

354
355 A. Yes. As I indicated in my Direct Testimony, shortly before the Decision Point
356 Lists ("DPLs") were filed in this docket, SBC injected into the DPL an assertion
357 that it had shown that over 90 percent of the traffic terminated by MCI to SBC is
358 ISP-bound traffic. I noted that this was done without discussion, without warning
359 and without a shred of evidence shared with MCI. (Ricca Direct, p. 6, lines 169-7,
360 184) The day after that testimony was filed, SBC sent to MCI what could be
361 described as a summary of the numbers that SBC has "identified" as ISP
362 numbers, as well as a brief statement similar to that found in Mr. MCPhee's Direct
363 at p. 39, line 897 and p. 40, line 917. That is basically the sum total of what was
364 presented, and it is clearly insufficient to satisfy SBC's burden to support this
365 claim.

366 Time has simply not been available in this case to evaluate this so-called

367 study in anything but a cursory manner. I do note that the total number of
368 minutes terminating to SBC from MCI seems to be greatly understated by SBC.
369 An understatement here would, of course, dramatically increase the percentage
370 of minutes shown in the “study” as ISP-bound. There has been no time to
371 determine either whether the numbers identified in the “study” generate the traffic
372 levels alleged by SBC or whether these numbers even generate the modem tone
373 alleged by SBC. Nor is there any indication of just how SBC would apply the
374 results that it alleges to future compensation. There is no discussion of how this
375 might impact the other portions of the ISP compensation issues. Nor have the
376 Parties ever discussed these issues in negotiations. An example of the type of
377 question that neither party has addressed is if the new presumption is to be
378 ninety percent of the minutes terminating to SBC from MCI are ISP minutes
379 (which MCI **does not** concede), then should that new presumption be used to
380 recalculate the FCC’s gross minutes cap by applying that assumption to first
381 quarter 2001 minutes annualized and then increased by twenty-one percent?
382 There has been no opportunity for this type of discussion to be undertaken, nor is
383 the extremely fast timeline afforded by an arbitration proceeding the time to do so
384 if the parties have not negotiated this issue during the 135 days preceding the
385 filing of the Petition.

386 This issue has no place in the abbreviated format of an arbitration hearing.
387 It has not been discussed among the parties and cannot be exposed to the type
388 of scrutiny that this so-called “study” deserves within the constraints of this

389 proceeding. SBC could have raised this issue during negotiations, but it failed to
390 do so. This significant issue and SBC's entire position is based upon a "study"
391 that was never provided to MCI in the context of negotiations prior to the
392 arbitration. Therefore, the ALJs and the Commission should reject this
393 unsupported and untested claim and the unsupported and untested study upon
394 which it is based.

395 **Q. Has MCI proposed that its ISP calls be compensated at the tandem**
396 **switching rate instead of the FCC-Ordered \$0.0007 for all calls?**

397
398 A. No, contrary to Mr. McPhee's statements in relation to SBC Issues Recip Comp
399 1d and 10a (McPhee Direct, p. 38, lines 862-39, 883), MCI has not advocated
400 that its tandem rate language override the ISP language contained in the ICA.

401 **Transit Traffic Issues**

402 **Q. Did SBC present any new issues regarding transit traffic?**

403 A. Yes, SBC attached a completely new appendix related to transit traffic, which
404 differs from the one that SBC attached to its response to MCI's Petition and
405 which differs from the one that reflects SBC's proposed language as it existed at
406 the time the MCI's Petition was filed. This is completely new language that MCI
407 was able to review for the first time only seven calendar days before rebuttal
408 testimony was due to be filed. For this reason, the ALJs and the Commission
409 should not consider SBC's last minute attempt to change its position on this issue
410 and should decide the issue as it was framed by the DPLs and the competing
411 contractual language reflected in reciprocal compensation appendix (MCI's
412 position as shown in reciprocal compensation issue number __) and the transit

413 traffic appendix (SBC's position). To do anything else would be fundamentally
414 unfair and inconsistent with the negotiation and arbitration framework of the
415 Telecommunications Act of 1996. However, if the ALJs and the Commission are
416 inclined to allow SBC to muddy the waters and will be considering this wholly
417 new appendix that SBC has attached to Mr. McPhee's testimony – something
418 which MCI believes should not be allowed – then the Commission should also
419 consider my counter proposal which is attached to this testimony. While I
420 attempt to address all of the issues that are raised by SBC's newly found
421 language and positions, time simply is not available within the constraints of this
422 proceeding to allow for the full development and narrowing of the issues – that is
423 something that should have occurred in the 135 days of negotiations that
424 preceded the filing of the Petition. Nevertheless, I attempt to address this as
425 completely as possible below and through the attached redlining I have done to
426 the transit traffic appendix that was attached to Mr. McPhee's testimony.

427 **Q. Have the parties ever discussed a transit traffic appendix?**

428 A. Yes, in the initial trading of drafts of the agreement, **SBC** had proposed
429 Transiting language in the body of the Reciprocal Compensation Appendix.
430 Before MCI could even provide all of its redline changes to SBC, SBC provided a
431 second version of the Reciprocal Compensation Appendix using strikeout
432 formatting to indicate removal of the transiting sections from its standard offer for
433 the Reciprocal Compensation Appendix and had placed the transit language in
434 its own Transiting Appendix.

435 MCI objected to that but, in an effort to promote substantive discussion of
436 transiting issues rather than a discussion of format, MCI redlined the draft of the
437 new SBC proposed Transit Appendix and sent that redlined version back to SBC.
438 That was the last time that the substantive issues were addressed. SBC's
439 position thereafter was that MCI could not raise transiting and SBC refused to
440 consider negotiating new language for transiting because it claimed that it just
441 was not required to do so in a Section 251/252 Agreement. The sum total of
442 discussion of this matter in my Direct Testimony related to SBC's refusal to
443 address transit traffic at all in this interconnection agreement. (Ricca Direct at
444 page 39, line 940 – page 41, line 974.)

445 Now SBC has presented for the third time its position on transiting traffic
446 through the transiting appendix attached to Mr. McPhee's testimony. Does this
447 latest proposal match the proposal reflected in the transiting traffic appendix that
448 SBC attached to its response to MCI's Peition that if submitted in this proceeding
449 on August 10? No, it does not. Does it match the transiting appendix that SBC
450 raised prior to the filing of the Petition? I do not know, nor am I able to simply run
451 a "compare documents" (in Microsoft Word) comparison since this late-injected
452 SBC proposal was presented only as an Acrobat pdf file. Does it reflect any of
453 the redline changes that MCI made to that original proposal? I do not think so,
454 but do not know for sure. Does it provide a point of agreement that reflects
455 disputed issues that the Parties agreed to arbitrate? Absolutely not.

456 **Q. Does MCI have any objections to this SBC proposed language for the all**
457 **new Transiting Appendix?**

458
459 A. Yes, I have multiple substantive objections to add to the procedural objections I
460 already raised above. In the event that the ALJs and the Commission decide to
461 address these new issues, they should adopt the transit language I attach to this
462 testimony, which is identified as MCI Exhibit 11.1.

463 **Q. Are there any over-arching substantive issues raised by SBC' late-injected**
464 **transit proposal?**

465
466 A. Yes, there are several. This ICA is an agreement between MCI and SBC for the
467 State of Illinois. It does not cover other states in which SBC is the ILEC. For this
468 reason, I have changed all references to "SBC 13STATE" and "SBC 12STATE"
469 to "SBC Illinois." Second, I have inserted "MCI" for "[COMPANY NAME]."
470 Third, I have deleted all paragraphs referring only to states other than Illinois and
471 labeled them "Intentionally omitted." Fourth, I preserved the dispute between the
472 Parties as to whether "Local" or "Section 251(b)(5) and ISP" is the best manner in
473 which to delineate local traffic by bold-underlining the latter and bold-italicizing
474 the former. I do not re-address this fourth change, but only preserve it as MCI
475 has consistently done throughout the negotiations process and in its initial
476 testimony. The changes I address here should not surprise SBC, unlike the
477 changes SBC proposed to MCI.

478 **Q. Are there any other global issues?**

479 A. I have used the same conventions used by the Parties in submitting the
480 proposed ICA to the Commission to indicate which Party supports a certain
481 section. I did not delete those parts of this Appendix with which MCI has

482 substantive disagreement (with the exception of the other-state paragraphs
483 described above). Rather, I bolded and underlined that text to indicate that this
484 is SBC's position and that MCI does not agree with that text. Similarly, when
485 adding new language for MCI, because there has been no opportunity to discuss
486 or negotiate this language, I have assumed SBC disagreement and bolded and
487 italicized all such additions.

488 **Q. You have bolded and underlined all of the definitions that SBC places in**
489 **this document. Does this mean that MCI disagrees with all of these**
490 **definitions?**

491
492 A. Not necessarily. This was simply an expedient way to get to the substantive
493 issues. If the Parties feel the need to go back and determine if these terms have
494 already been defined elsewhere or that there are substantive additions or
495 deletions required, they will necessarily need to do so in a cooperative effort.
496 There is simply no time to analyze and address those issues now. Additionally,
497 the definitions traditionally reside in the Definition Appendix, and I have neither
498 had an opportunity to check to see if these are covered in Definition Appendix
499 nor, if they are, whether they are consistent.

500 **Q. Are there any other issues about this new Appendix that you wish to**
501 **address before proceeding to the substantive issues?**

502
503 A. Yes, there is one. As noted above, SBC did submit a transit appendix with its
504 response to MCI's Petition for Arbitration. Though I had not noticed that
505 submission, it would not have mattered, since the attachment to Mr. McPhee's
506 testimony is different from that provided by SBC in its response to MCI's Petition.
507 To be sure, *most* of the substance in my redline matches that contained in the

508 transit appendix submitted with SBC's response. Not all of it, however.
509 Accordingly, to the extent the ALJs and the Commission are going to consider
510 this newly injected transit appendix at all, I stand by the language and edits to the
511 more recent McPhee-submitted transit appendix, as I presume that it, rather than
512 the transit appendix SBC submitted with its response , correctly characterizes the
513 areas of disagreement between the Parties on the substantive issues.

514 **Q. In section 3.1 of the proposed transit language, you have indicated a**
515 **change. Please explain.**

516
517 A. That section was very similar to one of the redline changes MCI made while the
518 ICA still was being discussed between the Parties. My change reflects the fact
519 that MCI does not agree that transiting interconnection is optional or voluntary on
520 the part of SBC.

521 **Q. The next substantive change appears to be at §3.7. Is this a new issue?**

522 A. No, the issue is not new. Only the requirement that MCI language be added to
523 protect MCI's positions on Issue Recip Comp 18 addressed at pages 9-10 of my
524 Direct Testimony. The changes here ensure that SBC cannot continue to dispute
525 and not pay for reciprocal compensation minutes as transit without also providing
526 information sufficient to allow MCI to suppress billing and to bill the originating
527 carrier appropriately. Both of the MCI additions in Section 3.7, as well as the
528 additions in 3.8, 3.11, 3.14 and 3.15 were made with this protection and issue in
529 mind. Similarly, the opposition to SBC's proposed language at the end of §3.7 is
530 made for the same reason.

531 **Q. Sections 3.12 and 3.13 appear as bold and underlined in their entirety. Why**

532 **does MCI disagree with the language in these two sections?**

533

534 A. MCI may not disagree with all of the language. However, there simply has been
535 inadequate opportunity to socialize this with all of the relevant parties inside MCI
536 to clearly determine all of the issues it presents.

537 **Q. Sections 4.0 - 4.4 also appear as bold and underlined in their entirety. Does**
538 **MCI disagree with the language in these two sections?**

539

540 A. Again, not necessarily. It appears to me that the entirety of this Section 4 could
541 be deleted without harming the positions of either Party. Lacking any opportunity
542 to discuss this with SBC or internal network and billing subject matter experts,
543 however, I proceed with caution. After comparing the two versions of the Transit
544 Appendix, I find that the Transit Appendix SBC submitted with its response does
545 not contain this Section 4 at all. Thus, there *may* be agreement to delete this
546 language.

547 **Q. You made the words “attached hereto” as bold and underlined in §5.2.**
548 **Why?**

549

550 A. The rates proposed by MCI are attached to the Appendix Pricing for the entire
551 interconnection agreement (the “master Pricing Appendix” for purposes of this
552 brief discussion). Discrepancies, if any, between the rates attached by Mr.
553 McPhee to his all new Transit Appendix should be resolved by using the rates
554 proffered by MCI or agreed upon by the Parties in the master Pricing Appendix.

555 **Q. What necessitated the changes you made to §5.2.2?**

556 A. The changes were made to clarify the correct amount of tandem transport that
557 would apply in the case of transiting to a third-Party carrier. The call would be

558 handed off by SBC to the third party at the POI between SBC and that party.
559 There would be no other SBC mileage involved – clearly not to the end office of
560 the third party unless, coincidentally, SBC established a POI with the third party
561 located off of its network.

562 **Q. It appears that the only other change you made to the McPhee-submitted**
563 **transit appendix was the addition of bold-underline to all of Section 7.**
564 **What caused that change?**

565
566 A. The subject of this section of SBC's proposal is direct end office trunking. That
567 topic is addressed comprehensively in the NIM/ITR Appendix in Section 8.3. It
568 need not be repeated in the transit appendix or the section of the reciprocal
569 compensation agreement dealing with transit issues.

570 **Q. The McPhee-submitted transit appendix contained an attachment that**
571 **purports to set forth the rates for Transit Traffic. Does MCI agree with**
572 **those rates?**

573
574 A. No. MCI's proposed rates are found in the master Pricing Appendix to the entire
575 Agreement. I thus bolded and underlined the entire attachment due to the lack of
576 adequate opportunity to carefully review the acceptability or appropriateness of
577 the rates contained thereon.

578 **Relative Use Factor ("RUF") Issues**

579 **Q. Mr. McPhee states that MCI is proposing a RUF for interconnection**
580 **facilities. (McPhee Direct, p. 56, lines 1304, 1312) Is that a correct**
581 **characterization of MCI's proposed RUF?**

582
583 A. No, it is not. As clearly delineated in our discussions with SBC and set forth in
584 my direct testimony, MCI proposes a RUF for application to ***two-way***
585 ***interconnection trunks – not the interconnection facilities on which the***

586 **trunks ride.** (Ricca Direct at 36-39.) This is also an important distinction
587 because of Mr. McPhee's subsequent claim that MCI's RUF proposal is
588 inconsistent with its statement in Section 3.2 that each Party is financially
589 responsible for providing all of the facilities and engineering on its side of the
590 POI. (McPhee Direct at 57/1320-1327.)

591 **Q. Is Mr. McPhee's suggestion that MCI's proposal uses a vague cost**
592 **standard accurate? (McPhee Direct, p. 57, lines 1328-1332)**

593 A. No, it is not. This misunderstanding of Mr. McPhee is likely a product of his
594 misperception that the RUF applies to facilities, in which case the cost to be
595 "RUFed" would be unclear. The cost of trunks is not vague – it is set forth in the
596 master Pricing Appendix. Further, these "problems" associated with the RUF
597 proposed by MCI were never raised by SBC during the negotiations sessions.

598 **Q. At page 57, lines 1338-1340, Mr. McPhee claims that "neither the Act nor**
599 **the FCC Order provides for the use of a Relative Use Factor to apportion**
600 **financial responsibilities of interconnection or transport facilities for a**
601 **Party's facilities to get to the POI." Do you agree?**

602 A. Yes, I do agree, but stress that the term of art he uses is "facilities." The facilities
603 in question are undoubtedly the responsibility of each Party on its side of the
604 POI. It is the trunks riding those facilities that both the Act and the FCC Order
605 implementing the Act clearly delineate as being subject to a RUF. I provided the
606 citation and much of the language used by the FCC in my Direct testimony at
607 page 36 line 854 through page 39 line 925. MCI's proposed language should be
608 adopted here.

610 **Q. Mr. McPhee claims that there was ambiguity as to whether the RUF was**

611 **applied to facilities or trunks. (McPhee Direct, p. 58, lines 1351-59, 1365) Is**
612 **there ambiguity in the contract language proposed by MCI?**

613
614 A. No. Moreover, although this exact issue was raised here and in the pending
615 Texas negotiation and arbitration, and though SBC has been in possession of
616 this language for over ten months, this is the first time I have heard that there is
617 ambiguity relating to the term “trunk facility.” (Ricca, p. 59, line 1364) If this is
618 the only issue that SBC has with the RUF language, MCI will gladly pull the word
619 “facility” from the term “trunk facility” in this section of the ICA.

620 **Direct Testimony of Mr. Carl C. Albright**

621 **Trunking to Tandems in Multi-Tandem LATAs**

622 **Q. Mr. Carl C. Albright Jr. also presented direct testimony for SBC addressing**
623 **some of your issues. Were there any incorrect characterizations or new**
624 **issues raised in his testimony?**

625
626 A. Yes, and there is one in particular that I will briefly address.

627 **Q. Is there a misunderstanding of MCI’s position regarding trunking to every**
628 **tandem in a multi-tandem LATA?**

629
630 A. Yes, there is. MCI is *not* proposing to terminate all of its calls in a multi-tandem
631 LATA through a single tandem switch. That is decidedly a mis-reading of the
632 manner in which MCI intends to configure its network. I have carefully
633 differentiated both in my direct testimony and in this rebuttal testimony the
634 differences in compensation responsibilities among one-way interconnection
635 *trunks* terminating local traffic to SBC (the responsibility of MCI), one-way
636 interconnection *trunks* terminating traffic to MCI (the responsibility of SBC) and
637 two-way interconnection *trunks* (addressed by applying a RUF to the trunk costs

638 set forth in this agreement). I also noted that each Party is responsible for the
639 interconnection *facilities* on its side of the POI. Here, Mr. Albright fails to
640 distinguish between the trunk types and apparently wishes to make MCI
641 responsible for establishing *all* such trunks. SBC's proposed language would
642 include a requirement for the CLEC to establish trunks: 1) that it otherwise might
643 not need; or 2) that traffic may not justify; or 3) that may in fact be SBC's
644 responsibility to establish. The Commission should reject this overly broad SBC
645 language in favor of the differentiated approach advocated by MCI.

646

647 **Direct Testimony of Mr. Michael Kirksey**

648 **VoIP Issues**

649 **Q. Mr. Michael Kirksey addresses voice over Internet Protocol ("VoIP") in his**
650 **prefiled Direct Testimony. Does he raise any new issues?**

651
652 A. No, he does not. He does, however, mischaracterize MCI's position for what he
653 calls PSTN-IP-PSTN (or VoIP in the middle) traffic. As my Direct testimony
654 made clear, MCI's definition of VoIP for which it seeks bill and keep treatment
655 does not include VoIP in the middle. (Ricca Direct at 12/298-13/318.) Only calls
656 that undergo a net protocol conversion are subject to the definition proposed by
657 MCI. The Commission should not be misled by Mr. Kirksey's apparent attempt
658 to portray MCI's proposal as contrary to the FCC's Declaratory Ruling against
659 AT&T⁵ that VoIP-in-the-middle traffic is not an enhanced service. MCI accepts

⁵ *In the Matter of Petition of Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are*

660 that judgment and does not include VoIP-in-the-middle as part of its definition.

661

662 **CONCLUSION**

663 **Q. Would you please summarize your testimony?**

664 A. Yes. MCI's positions on each of the issues I have addressed should be adopted
665 by the Commission, for the reasons set forth herein and in my Direct Testimony.
666 SBC misused the negotiations process and failed to narrow issues. Instead of
667 engaging in meaningful negotiations, SBC apparently was attempting to secure
668 as many concessions as possible and then, in its response and direct testimony,
669 insert new issues, mischaracterize MCI's positions on issues and add new
670 interconnection agreement language, which it never discussed with MCI and
671 which creates a multitude of new issues instead of working towards agreement
672 and more narrow issues.

673 **Q. Does this complete your testimony?**

674 A. Yes it does.

675