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Witness: Don Price  
Sponsoring Party: MCI WorldCom Communications,  
and Brooks Fiber Communications  
of Missouri, Inc.  
Type of Exhibit: Surrebuttal Testimony  
Case No.: TC-2000-225, et al.

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**MCI WORLDCOM COMMUNICATIONS, INC.**

**AND**

**BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.**

**SURREBUTTAL TESTIMONY**

**OF**

**DON PRICE**

**CASE NO. TC-2000-225, et al.**

**St. Louis, Missouri  
June 28, 2000**



**Surrebuttal Testimony of Don Price**

1 **Q. Please identify yourself.**

2 A. My name is Don Price. I have previously submitted direct testimony in this case.

3

4 **Q. What is the purpose of your surrebuttal testimony?**

5 A. I respond to the rebuttal testimony of SWBT witnesses Hughes, Cooper, Halprin, Welch and  
6 Springfield. Specifically, I will show that:

7 1) the majority of the testimony presented by SWBT has nothing to do with the  
8 disputed issue in this proceeding;

9 2) the testimony presented regarding SWBT policy and its interpretation of FCC  
10 pronouncements is irrelevant to the question of the parties' agreement as reflected in  
11 the interconnection agreements in dispute in this proceeding; and

12 3) long-standing industry standards and FCC rulings support the conclusion that  
13 Brooks and MCIWC are entitled to reciprocal compensation for completing locally-  
14 dialed calls from SWBT end users to ISP end users served by Brooks and MCIWC  
15 because, notwithstanding SWBT's jurisdictional arguments, Brooks and MCIWC  
16 "terminate" such traffic under the language of the agreements and should be  
17 compensated by SWBT for that terminating function.

18

19 **Q. You stated that the majority of rebuttal testimony presented by SWBT has nothing to  
20 do with the disputed issue in this proceeding. In what way or ways is SWBT's  
21 testimony irrelevant?**

22 A. Messrs. Cooper, Halprin, Hughes, and Springfield present voluminous rebuttal testimony on  
23 what is essentially a policy question -- namely, what policy decision the Missouri PSC should  
24 reach as to the compensation to be paid for dial-up local traffic from SWBT's customers to  
25 ISP customers of an interconnecting carrier. However, that is not the question before the  
26 PSC in this proceeding.

1 This case does not involve "policy issues". The question before the Commission is whether  
2 or not SWBT is required by the provisions of existing interconnection agreements to pay  
3 reciprocal compensation on local traffic "terminated" by the Complainants to their ISP end  
4 users. This is not an arbitration in which the Commission would have to decide whether or  
5 not reciprocal compensation should be required as a matter of policy, but rather a case in  
6 which the Commission has to interpret, apply and enforce existing voluntary contractual  
7 commitments. Policy discussions are not on point. The Commission needs to focus on the  
8 contract language and the facts and circumstances surrounding the negotiation of that  
9 language.

10  
11 As I noted in the introduction to my direct testimony, the PSC can resolve this case by simply  
12 looking to the language of each contract, the parties' intent, and the industry custom and  
13 practice at the time each contract was entered into, and then answering the question – What  
14 types of calls did the parties intend to include within the provisions of the contracts dealing  
15 with reciprocal compensation? What sorts of provisions SWBT now believes *should be* in  
16 the contract is irrelevant.

17  
18 **Q. Would you provide examples of SWBT's rebuttal testimony that are not germane to**  
19 **this proceeding?**

20 **A.** Certainly. The testimony of Messrs. Hughes and Cooper which discusses alleged differences  
21 between what they characterize as "true local traffic" and "calls bound for the Internet" is  
22 completely irrelevant to the question of what the parties agreed in the contracts in dispute.

1 Likewise, the testimony of Messrs. Halprin and Hughes as to incentives and/or disincentives  
2 which might flow from a policy decision to require payment of reciprocal compensation on  
3 "calls bound for the Internet" is obviously a question of policy rather than one of interpreting  
4 and applying the contracts at issue. Also irrelevant are the various witnesses' discussions of  
5 whether CLECs would "over-recover" their costs through reciprocal compensation, and the  
6 discussions of the alleged relationship between SWBT's payments to the CLECs relative to  
7 SWBT's revenues from basic local service.

8  
9 Whether or not local traffic to ISP end users has different cost characteristics and/or holding  
10 times than other local traffic is irrelevant, because the parties did not agree to exclude calls  
11 with longer holding times from the definition of local traffic. Likewise, the purported  
12 incentives of the agreed upon contract provisions are irrelevant. Nor should the Commission  
13 consider revenue impacts on the parties. While these may well be the reasons that SWBT has  
14 changed its mind and is no longer willing to make contracts in which it agrees to pay  
15 reciprocal compensation on local traffic to ISP end users, such policy arguments are outside  
16 the scope of the agreements and do not provide a basis for SWBT to avoid its existing  
17 contractual commitments.

18  
19 **Q. You stated in your summary that SWBT's testimony regarding its policy and its**  
20 **interpretation of FCC pronouncements is irrelevant to the question of the parties'**  
21 **agreement. Would you elaborate this point?**

1 A. Yes. The SWBT witnesses conveniently overlook a pronouncement by the FCC that is  
2 directly on point as to the complete absence of a link between its jurisdictional determination  
3 and the question of compensation owed. The FCC clearly stated:

4 After reviewing the record developed in response to these requests, we  
5 conclude that ISP-bound traffic is jurisdictionally mixed and appears to be  
6 largely interstate. *This conclusion, however, does not in itself determine*  
7 *whether reciprocal compensation is due in any particular instance.*  
8 (Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed  
9 Rulemaking in CC Docket No. 99-68, released February 26, 1999, at ¶ 1  
10 [emphasis added].)

11 This unequivocal statement makes clear that the vast majority of testimony presented by the  
12 SWBT witnesses is irrelevant and should be disregarded.

13  
14 In this order, the FCC made it abundantly clear that its findings concerning the regulatory  
15 jurisdictional nature of the traffic had nothing to do with the question of whether parties had  
16 agreed to pay reciprocal compensation on the traffic. In its February 26, 1999 Declaratory  
17 Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-  
18 68 (the “FCC Order”), the FCC held as follows:

- 19 - “the jurisdictional nature of ISP-bound traffic is determined by the nature of the end-  
20 to-end transmission between an end user and the Internet” (FCC Order, ¶ 18);  
21  
22 - “a substantial portion” of ISP-bound traffic is interstate, but “in the current absence  
23 of a federal rule governing inter-carrier compensation” it is not “necessary to reach  
24 the question of whether such traffic is separable into intrastate and interstate traffic”  
25 (FCC Order, ¶ 18 and 19);  
26  
27 - “in the absence of such a rule, parties may voluntarily include this traffic within the  
28 scope of their interconnection agreements” (FCC Order, ¶ 22);  
29  
30 - “where parties already have agreed to include this traffic within their section 251 and  
31 252 interconnection agreements, they are bound by those agreements, as interpreted  
32 and enforced by the state commissions” (FCC Order ¶ 22);

- 1 - parties already “may have agreed to treat the traffic as subject to reciprocal  
2 compensation” because “the Commission has treated ISP-bound traffic as though it  
3 were local” (FCC Order ¶ 23);  
4
- 5 - “against these backdrops, and in the absence of any contrary Commission rule, parties  
6 entering into interconnection agreements may reasonably have agreed, for the  
7 purposes of determining whether reciprocal compensation should apply to ISP-bound  
8 traffic, that such traffic should be treated in the same manner as local traffic” (FCC  
9 Order ¶ 24)
- 10
- 11 - state commissions, not the FCC, must ascertain “the parties intentions” and  
12 “constru[e] the parties’ agreements to determine whether the parties so agreed” based  
13 on “all the relevant facts” (FCC Order ¶ 24);  
14
- 15 - state commission shall determine “what factors are relevant in ascertaining the parties  
16 intentions” (FCC Order ¶ 24);  
17
- 18 - state commission may consider, for example, the following factors:  
19
- 20 - “the negotiation of the agreement in the context of [the FCC’s] longstanding  
21 policy of treating this traffic as local”  
22
  - 23 - “the conduct of the parties”  
24
  - 25 - whether the incumbent LEC services ISPs out of intrastate tariffs and counted  
26 such revenues as intrastate revenues  
27
  - 28 - whether the parties “made any effort to meter this traffic or otherwise  
29 segregate it from local traffic, particularly for the purpose of billing one  
30 another for reciprocal compensation”  
31
  - 32 - whether the incumbent has included calls to ISPs in message-unit-billed local  
33 telephone charges  
34
  - 35 - whether the parties would otherwise be compensated for such traffic if it is not  
36 “treated as local and subject to reciprocal compensation” (FCC Order ¶ 24)  
37
  - 38 - “the Commission’s holding that parties’ agreements, as interpreted by state  
39 commission, should be binding also applies to those state commissions that  
40 have not yet addressed the issue” (FCC Order ¶ 28)

1 While the courts have vacated this FCC decision due to a failure to adequately explain why  
2 reciprocal compensation is not mandatory for such traffic, the FCC has recently indicated that  
3 it intends to consider the factors identified in its prior decision in resolving a dispute pending  
4 in Virginia that is similar to the instant case. (In the Matter of Starpower Communications,  
5 LLC, CC Docket 00-52, Memorandum Opinion and Order (June 14, 2000)). I would  
6 observe that if SWBT's testimony about FCC rulings was correct, and the disputed traffic was  
7 by definition non-compensable, the FCC certainly would not have decided to take on the  
8 Virginia case due to the state commission's failure to act, and would not have indicated an  
9 intent to decide on what the parties agreed.

10  
11 Contrary to Mr. Halprin's testimony, the FCC continues to recognize that because ISPs pay  
12 local rates to the originating LEC rather than access rates and have been treated as local  
13 customers, parties to interconnection agreements likely agreed to treat calls to ISPs as local  
14 traffic subject to reciprocal compensation rather than free access traffic with no charges to  
15 share.

16  
17 **Q. In your summary, you stated that long-standing industry standards and the FCC's**  
18 **rules support the conclusion that Brooks and MCIWC are entitled to reciprocal**  
19 **compensation for ISP-bound traffic. What is the basis for this statement?**



1 A. The answer to this can be easily seen through a simple description of the way a SWBT  
2 subscriber places a dial-up call to connect to the Internet when the ISP is a customer on the  
3 Brooks or MCIWC networks.

4  
5 The SWBT customer would begin by clicking on a "dial-up" icon on the computer to dial the  
6 ISP's access number. When the icon was established, the customer's user name and  
7 password, as well as the ISP's access number, would have been stored in the computer so that  
8 the customer merely has to click the "connect" button for the computer to dial the number  
9 using the computer's modem.

10  
11 When the customer clicks on the computer icon, the computer sends information to SWBT's  
12 local switch serving the customer advising the switch that the customer has gone "off-hook."  
13 (The "off-hook" condition is telephone-speak for how the SWBT switch reacts when the  
14 customer lifts the receiver off the switch-hook or hits the "talk" button on a cordless handset.)

15 In response to the "off hook" condition, the SWBT local switch provides a dial tone, which  
16 signals that it is ready for the customer to dial the called party's telephone number -- in this  
17 instance, the ISP. Upon sensing the dial tone, the customer's computer acts precisely like a  
18 touch tone phone and sends the multi-frequency tones corresponding to the ISP's telephone  
19 number.

20  
21 To properly route the call, the SWBT local switch first analyzes the telephone number to  
22 determine whether the call is local, intraLATA toll, or interLATA. This is done by comparing

1 the dialed number with the calling number. If the switch determines that the dialed number  
2 is, for example, a MCIWC number within the local calling area of the SWBT customer, the  
3 call is routed to a local interconnection trunk between SWBT and MCIWC. When the call  
4 passes over the SWBT/MCIWC local interconnection trunk, MCIWC's local switch analyzes  
5 the dialed number (in the same way it would any incoming call) and signals the customer's  
6 customer premises equipment -- by providing "ring tone" -- that a call is being attempted.  
7 When the MCIWC end user customer goes "off hook," the MCIWC local switch senses that  
8 the call has been answered and completes the call. As will be shown below, the functions that  
9 MCIWC performs in this example (which would be the same for Brooks or any other CLEC)  
10 for such an incoming call are referred to as call "termination."

11  
12 **Q. In what way does this description relate to your statement that industry standards**  
13 **consider MCIWC and Brooks to have "terminated" the call in accordance with**  
14 **industry practice and the terms of the contracts?**

15 **A.** The contracts between Brooks and SWBT and MCIWC and SWBT require that  
16 interconnection be accomplished using Common Channel Control Signaling System 7, often  
17 referred to simply as SS7 signaling. The relevant portion of the MFS contract (§ 8.5  
18 Signaling) states:

19 8.5.1 Where available, CCS signaling shall be used by the Parties to set  
20 up calls between the Parties' Telephone Exchange Service networks. If  
21 CCS signaling is unavailable, MF(Multi-Frequency) signaling shall be used  
22 by the Parties. Each Party shall charge the other Party equal and reciprocal  
23 rates for CCS signaling in accordance with applicable tariffs. During the  
24 Term of this Agreement neither Party shall charge the other Party  
25 additional usage-sensitive rates for SS7 queries made for Local Traffic.

1 The Brooks agreement has similar provisions in Section II and Appendix ITR.

2 SS7 signaling is how the carriers' networks communicate with each other so that calls can be  
3 set up and taken down across the networks. (Of course, SWBT uses SS7 within its own  
4 network for numerous purposes, including call set-up and take-down.) Briefly, SS7 signaling  
5 is the means by which the carriers' networks "interoperate," based on industry-standards.

6 Those standards set out the requirements for signaling messages (data) the networks pass  
7 back and forth -- at the speed of light -- so that telecommunications can flow as easily  
8 between the networks as within a given carrier's network.

9 In my earlier example, when SWBT's local switch serving the customer recognizes that the  
10 called number is associated with MCIWC, the SWBT switch would send to MCIWC a SS7  
11 message requesting an open local interconnection trunk for transmission and alerting MCIWC  
12 of the called party's number. MCIWC would respond with appropriate SS7 messages,  
13 advising of the available local interconnection trunk path between the carriers' local switches  
14 and that the called party's line is not busy. In response to that SS7 signaling information from  
15 MCIWC, SWBT's local switch would route the call to the available local interconnection  
16 trunk path for completion by MCIWC. As discussed above MCIWC would then complete  
17 the call to its end user customer, and would provide to SWBT an SS7 message ("address  
18 complete" or "answer") notifying SWBT that the call had been answered.

19  
20 All of these steps, which occur almost instantaneously, are utilized in setting-up and  
21 completing a call. These steps are in accordance with Telcordia (nee, Bellcore) standards for  
22 the industry, and correspond precisely to the definition of "Terminating Traffic," in the

1 Brooks agreement which I noted in my direct testimony, is as follows:

2 "Terminating Traffic" is a voice-grade telecommunications service which is  
3 delivered to an end user(s) as a result of another end user's attempt to  
4 establish communications between the parties." (Brooks/SWBT Agreement  
5 at Appendix Define, "X")

6 The MCIWC contract uses the word "termination" in the same way. In the example  
7 previously discussed, the call is a "voice-grade telecommunication" as it is initiated by  
8 SWBT's customer over that customer's local service provided by SWBT. Further, the call  
9 is "delivered to an end user" of MCIWC (or Brooks or another CLEC). Finally, the  
10 communication is established precisely because SWBT's customer has "attempted to  
11 establish" the communication.

12  
13 As noted above in the discussion of how the carriers' networks communicate using the SS7  
14 signaling protocol, when SWBT's end user "attempt[s] to establish communications" with the  
15 MCIWC end user customer (the ISP), the MCIWC switch "deliver[s] to an end user..." the  
16 call, and sends to SWBT a SS7 message advising that the call has been completed. The  
17 functions MCIWC or Brooks performs in completing such a call is squarely within the  
18 meaning of "termination" of local calls under the contracts.

19  
20 It is instructive to analyze SWBT's flawed arguments in light of the contract language. If  
21 SWBT's witnesses were correct, which they are not, that calls from its end users to ISP end  
22 users served by CLECs "terminate" somewhere on the Internet for purposes of the  
23 agreement, then SWBT's switches would receive notice of call completion from some entity

1 other than MCIWC or Brooks -- presumably an ISP. But the call completion information is  
2 provided to SWBT by MCIWC or Brooks. Furthermore, if SWBT's witnesses were correct  
3 that calls do not "terminate" within the local calling area under the contract language, it  
4 would mean that each time SWBT's customer selects a different website for browsing, the  
5 unknown entity providing to SWBT the mythical "terminating function" would be responsible  
6 for notifying SWBT that the "call" had been delivered to yet another "end user." According  
7 to SWBT's arguments, the "end user" would be each and every provider of content visited  
8 by SWBT's customer while browsing the Internet. SWBT's witnesses are well aware of the  
9 fact that this simply doesn't occur, because, as I noted in my direct testimony, the only  
10 carriers involved in the call are SWBT and MCIWC (or Brooks). The fact is that MCIWC  
11 (or Brooks) provides to SWBT notice of call completion in accordance with the  
12 aforementioned SS7 industry standards *when it delivers the call to its end user, the ISP.*  
13 This is in accordance with the terms of the agreement reached in negotiations and reflected  
14 in the contracts approved by this Commission. No amount of obfuscation by SWBT's  
15 witnesses can change these facts.

16  
17 **Q. Are the FCC's regulations consistent with the contracts' definition of "terminating**  
18 **traffic?"**

19 **A.** Yes. The term "termination" is defined in subpart H of the FCC's Rules, entitled "Reciprocal  
20 Compensation for Transport and Termination of Local Telecommunications Traffic."  
21 Specifically, § 51.701(d) defines "termination" as follows:

1 For purposes of this subpart, termination is the switching of local  
2 telecommunications traffic at the terminating carrier's end office switch, or  
3 equivalent facility, and delivery of such traffic to the called party's premises.

4 As shown by the example I have used throughout this testimony, it is clearly MCIWC and  
5 Brooks, rather than some mythical entity out in the Internet, that performs the functions  
6 associated with terminating traffic dialed by the SWBT customer.

7  
8 **Q. Does your testimony on this issue match with the contractual definitions of "Local  
9 Traffic" approved by this Commission?**

10 A. Yes. As I noted in my direct testimony, the Brooks/SWBT agreement defines "Local Traffic"  
11 at Appendix Define, "P" as follows:

12 "Local Traffic" means traffic that originates and terminates within a SWBT  
13 exchange including SWBT mandatory local calling scope arrangements.  
14 Mandatory Local Calling Scope is an arrangement that requires end users to  
15 subscribe to a local calling scope beyond their basic exchange serving area.

16  
17 The MCIWC/SWBT agreement also contains a similar definition:

18  
19 1.30 "Local Traffic" for purposes of intercompany compensation, means  
20 traffic that originates and terminates between or among end users within a  
21 SWBT local calling area as defined in SWBT tariffs and any successor tariffs,  
22 including mandatory local calling scope arrangements but excluding optional  
23 EAS areas. Mandatory Local Calling Scope is an arrangement that requires  
24 end users to subscribe to a local calling scope beyond their basic exchange  
25 serving area. In no event shall the Local Traffic area for purposes of local call  
26 termination billing between the Parties be decreased during the Term of this  
27 Agreement.

28  
29 **Q. How do these definitional provisions relate to your example of the dial-up call initiated  
30 by the SWBT customer**

31 A. As I discussed previously, the SWBT local switch serving SWBT's customer makes a

1 determination when the call is dialed whether the call must be routed to an inter-exchange  
2 carrier for completion (interLATA call) or routed using SWBT's and/or other ILECs' toll  
3 facilities (intraLATA call). If neither of those is true, SWBT's switch recognizes the dialed  
4 number as a number associated with the "local calling scope" and routes that call to the  
5 appropriate local interconnection trunk so that, for example, MCIWC or Brooks can  
6 complete that call to their end user customer. In that case MCIWC and Brooks are  
7 "terminating" the call as that term is defined in the agreements and in keeping with industry  
8 standards. Furthermore, the call is "local traffic" pursuant to the MCIWC and Brooks  
9 contracts because the call is "terminated" within the local calling scope. Notwithstanding the  
10 numerous irrelevant arguments presented by the various SWBT witnesses, MCIWC and  
11 Brooks, under the terms of their respective agreements, are entitled to reciprocal  
12 compensation for such local traffic, including calls from SWBT end users to ISP end users  
13 served by MCIWC and Brooks.

14  
15 **Q. Mr. Halprin assert that your testimony is contradicted by the FCC's *Advanced Services***  
16 ***Remand Order*. Mr. Cooper references the same point in a footnote. How do you**  
17 **respond?**

18 **A.** Mr. Halprin seems to submit a brief of legal arguments rather than factual testimony, and I  
19 will in large part leave it to our attorneys to respond to his arguments in our briefs.  
20 However, I would point out that the order he and Mr. Cooper reference is subject to  
21 continuing court challenges. Further, I would observe that the order concerns unbundling of  
22 xDSL-based advanced services, not reciprocal compensation agreements for local dial-up

1 calls to ISPs. Both the FCC and the courts have made clear such matters are separate and  
2 distinct. It is also my understanding that the order in many instances simply restates the  
3 jurisdictional analysis of the FCC order that has been vacated by the D.C. Circuit Court I  
4 have already mentioned.

5  
6 **Q. Mr. Halprin asserts at page 3 that the Complainants seek to have it “both ways” with**  
7 **regard to SWBT’s obligations under FCC orders and its interconnection agreements.**  
8 **How do you respond?**

9 A. There is nothing inconsistent in our expectation that SWBT fulfill both its regulatory and  
10 contractual obligations.

11  
12 **Q. Mr. Halprin asserts your testimony involves a discredited “two-call” theory. How do**  
13 **you respond?**

14 A. I have explained the meaning of the contractual provisions regarding payment of reciprocal  
15 compensation for “termination” of local traffic. Numerous courts and commissions have  
16 endorsed the same explanation. There is nothing “discredited” about my testimony. Further,  
17 the FCC has repeatedly made clear that agreements to pay reciprocal compensation on calls  
18 to ISP end users are enforceable, and that based on its policy of treating such traffic as local  
19 it was likely that such agreements were in fact made.



1 **Q. Mr. Hughes purports to summarize the claims made in this case. Do you have a**  
2 **response?**

3 A. Mr. Hughes' summary is inaccurate and argumentative. It is our position that the parties  
4 agreed to pay reciprocal compensation on all local traffic, including local traffic that  
5 terminates to ISP end users, pursuant to contractual language that should be so interpreted  
6 in accordance with industry custom and usage. We do not view traffic that terminates to ISP  
7 end users as being "untrue" local traffic, as Mr. Hughes suggests. We do not view local traffic  
8 as being "routed through" ISP end users, but rather as terminating to such end users, as such  
9 terms were used in the telecommunications industry at the time the contracts were negotiated.  
10 We are not asking the Commission to "characterize" traffic, but rather to recognize traffic  
11 that terminates to ISP end users as being local traffic under the terms and conditions of the  
12 interconnection agreements. We are asking the Commission to reject SWBT's after-the-fact  
13 attempt to change the agreement. We are asking the Commission to require SWBT to fulfill  
14 its agreements.

15  
16 **Q. On pages 3 and 10-11, Mr. Hughes discusses the Birch/SWBT arbitration case. How**  
17 **do you respond to this portion of his testimony?**

18 A. It is important that the Commission recognize that the Birch/SWBT arbitration is distinct  
19 from this proceeding. In this case the Commission is charged with resolving a dispute over  
20 the meaning and application of existing agreements, whereas in the Birch arbitration the  
21 Commission was charged with establishing a policy in the absence of an agreement between  
22 the parties. In this case, the Commission is constrained to interpret the contracts in

1 accordance with the prevailing custom and usage of the industry at the time the contracts  
2 were made. It does not have the leeway to make the kinds of policy decisions that it can  
3 make in an arbitration.

4  
5 I would also point out that it is clear that SWBT changed its position on payment of  
6 reciprocal compensation on local calls to ISP end users served by CLECs after it had made  
7 the agreements that are at issue in this case. While that perhaps entitled SWBT to force  
8 arbitration of the issue with Birch, it has no bearing upon the enforceability of SWBT's prior  
9 agreements.

10  
11 Whether or not it was appropriate for the Commission to defer the policy issue in the  
12 Birch/SWBT arbitration case, in this case the Commission should not defer the interpretation  
13 and enforcement of existing agreements because the Commission has before it all necessary  
14 information to resolve this case and rule that the parties did agree to pay reciprocal  
15 compensation on all local traffic including traffic that "terminates" to ISP end users under the  
16 language of the contracts.

17  
18 I believe the Commission recognized these distinctions between the present case and the  
19 Birch/SWBT arbitration when it denied SWBT's motion to dismiss this case.

20  
21 **Q. At Page 5, Mr. Hughes asserts that it would be illogical for the Commission to agree**  
22 **with the Complainants in this case. How do you respond?**

1 A. It certainly did not “defy logic” for the parties to include local calls to ISP end users together  
2 with all other local traffic for purposes of reciprocal compensation under the interconnection  
3 agreements. Mr. Hughes and the SWBT negotiators cannot pretend that they were unaware  
4 when these agreements were made that ISPs were treated as purchasers and recipients of  
5 SWBT’s local services, as they still are today. The FCC allows ISPs to purchase service out  
6 of local tariffs. There is no distinction between the terminating function provided by an  
7 interconnecting CLEC when a SWBT end user calls non-ISP end users or ISP end users  
8 served by the CLEC, under the contract provisions.

9  
10 It was no less “logical” for the parties to agree to pay reciprocal compensation on ISP traffic  
11 than it was for the numerous other industry participants to have so agreed, including SWBT  
12 itself in Oklahoma and Texas. It was not illogical for the numerous courts and other  
13 commissions to enforce these agreements. Indeed, the materials from other CLECs that Mr.  
14 Hughes attached to his testimony confirm that other existing agreements between other  
15 carriers also require the payment of reciprocal compensation on local calls to ISPs. See, for  
16 example, Hughes Schedule 4 at page 29. In particular, the statement of Covad’s Chairman  
17 that “reciprocal compensation should be abolished for calls to Internet service providers”  
18 quoted by Mr. Hughes confirms that reciprocal compensation is currently in place, for  
19 otherwise it would not need to be abolished. Abolition of course is a matter of future policy  
20 debate, not present contract interpretation and application.

1 **Q. Mr. Hughes discusses "internet telephony" at page 7 of his rebuttal testimony. How do**  
2 **you respond to this testimony?**

3 A. The development of the potential use of internet connections for voice communications, which  
4 primarily post-dates these agreements, is irrelevant to this case. No matter how customers  
5 are using the internet, when they establish a telecommunications connection between  
6 themselves and an ISP by means of a local telephone call, the parties to this case agreed to  
7 pay each other reciprocal compensation.

8  
9 **Q. Mr. Hughes and Mr. Halprin discuss the costs CLECs experience in serving ISPs and**  
10 **the revenue impacts of reciprocal compensation. How do you respond?**

11 A. Again, these witnesses are raising irrelevant matters. The agreements establish the applicable  
12 reciprocal compensation rates. The agreements do not require the parties to accomplish local  
13 terminations for each other at particular costs. The parties are free to reduce costs and  
14 maximize revenues, like any other businesses. However, the parties are not free to violate  
15 their contractual promises, as SWBT has done.

16  
17 Further, I fail to see any relevance whatsoever in statements and activities of non-parties, such  
18 as Level 3, Pac West, and Covad, about their networks and costs. Such statements have no  
19 bearing upon the negotiations between SWBT and the Complainants that resulted in the  
20 instant interconnection agreements.

1 **Q. On page 13, Mr. Hughes asserts that the Commission would have to "re-write" the**  
2 **interconnection agreements in order to grant the relief requested in the complaints in**  
3 **this case. Do you agree?**

4 A. No. The contracts already require SWBT to pay reciprocal compensation on all local traffic  
5 that terminates to end users served by the CLECs that are parties to this case, including ISP  
6 end users, under the established meaning of "termination". SWBT recognized this in the Birch  
7 arbitration and proposed excluding language to accomplish its new goal and not make any  
8 new commitments to pay reciprocal compensation on local calls to ISP end users. Again, the  
9 actions of the Commission in the Birch arbitration must be distinguished from its actions in  
10 this existing contract case that concerns whether or not agreed upon contract provisions and  
11 rates apply to particular traffic.

12  
13 **Q. At page 14, Mr. Hughes makes statements about evidence surrounding the negotiations**  
14 **of the contracts. Do you agree with these statements?**

15 A. No. Mr. Devine and Mr. Cadieux have supplied specific evidence regarding the negotiations.  
16 Moreover, no matter how many times Mr. Hughes denies it, the FCC's long-standing policy  
17 was and still is to treat these calls as local traffic.

18  
19 **Q. At page 15, Mr. Hughes denies that SWBT's position regarding the applicability of**  
20 **reciprocal compensation to local traffic terminating at ISP locations has changed. Mr.**  
21 **Halprin makes similar comments at page 36-37. How do you respond?**

22 A. SWBT has been held to have agreed to pay reciprocal compensation on local traffic

1 terminating to ISP end users in Texas and Oklahoma. SWBT agreed to make such payments  
2 under the interconnection agreements now before the Commission. Only after making those  
3 agreements did SWBT change its mind.  
4

5 **Q. At page 16, Mr. Hughes asserts that the Complainants are seeking treatment of traffic**  
6 **terminating at ISP end users that differs from FCC treatment. Do you agree?**

7 A. No. Again, the FCC treats such traffic as local and has expressly allowed parties to agree  
8 to pay reciprocal compensation on it. The parties to this case did agree. Unlike Mr. Hughes,  
9 I will not speculate on what this Commission would have done in 1996 or 1997 had the  
10 parties disagreed and presented an arbitration, but I will note that the overwhelming majority  
11 of state commissions acting during that time period, and thereafter, have decided that such  
12 traffic is local for reciprocal compensation purposes.  
13

14 **Q. On page 17, Mr. Hughes discusses the expiration of the subject interconnection**  
15 **agreements. How do you respond?**

16 A. The agreements have not expired. We do not agree that SWBT has the right to unilaterally  
17 terminate the agreements. As stated in the correspondence attached to Mr. Hughes'  
18 testimony as Schedule 7, we are willing to engage in discussions and dispute resolution  
19 regarding new agreements, but do not agree with SWBT's assertions that it can initiate  
20 proceedings under section 252 of the Telecommunications Act of 1996. We have not  
21 asserted that the agreements are perpetual.

1 Moreover, the ultimate termination and replacement of these agreements has no bearing upon  
2 this case and the meaning of the provisions of these agreements.

3  
4 Finally, we do not agree that it is appropriate to pejoratively characterize successful business  
5 implementation of contracts as a "windfall". We believe that all businesses try to make the  
6 most of their contracts. We believe that most businesses try to live up to their agreements.

7 We believe that very few businesses go to the lengths that SWBT has gone to try to litigate  
8 away their contractual commitments.

9  
10 **Q. Turning now to Mr. Cooper's rebuttal testimony, at page 5 Mr. Cooper seems to assert**  
11 **that the Telecommunications Act and FCC orders have placed limits on the traffic on**  
12 **which interconnecting telecommunications companies can agree to pay reciprocal**  
13 **compensation, and specifically have precluded such companies from agreeing to pay**  
14 **reciprocal compensation on local calls to ISPs. Do you agree?**

15 **A.** No. It is my understanding that the courts have confirmed that interconnecting companies  
16 can agree to pay reciprocal compensation on local calls to ISPs without violating any  
17 provision of the Act or any FCC order or rule. The Fifth Circuit Court of Appeals decision  
18 that I quoted in my direct testimony is one example of such a court decision.

19  
20 **Q. At page 5-6, Mr. Cooper asserts that FCC rulings compel the conclusion that reciprocal**  
21 **compensation does not apply to ISP traffic. How do you respond.**

22 **A.** Such an assertion is frivolous in light of the numerous court and state commission decisions

1 that disagree. Likewise, the FCC has made it abundantly clear that ISP's are treated as end  
2 users that purchase local exchange services. Mr. Cooper admits this at page 11, line 16 to  
3 page 12 line 2. Further, the FCC has made it abundantly clear that was perfectly acceptable  
4 for companies such as the parties to this case to agree to pay each other reciprocal  
5 compensation on calls terminating to ISP customers. Even in the materials that Mr. Cooper  
6 attaches as his Schedule 1 (at page 3, column 1), FCC officials acknowledge the continuing  
7 propriety of such compensation arrangements and enforcement thereof by state commissions.

8 And now the FCC has undertaken the enforcement of a Virginia agreement.  
9

10 **Q. Is Mr. Cooper correct when he asserts on pages 6-7 that the Complainants contend that**  
11 **reciprocal compensation is owed on all calls originated by SWBT end users?**

12 **A.** No. As we have explained in direct testimony, the agreements define what traffic is subject  
13 to reciprocal compensation, and the language used includes calls terminated to ISP end users  
14 under prevailing custom and usage. Mr. Cooper significantly distorts the nature of the  
15 dispute. As he admits at page 8, compensation is owed when SWBT originates local calls for  
16 its retail end users that are terminated by the Complainants to their end users. Contrary to  
17 his testimony, there is no provision in the agreement that attempts to evaluate whether the  
18 originating carrier "caused" the end users to place the calls.  
19

20 **Q. Mr. Cooper describes a purported compensation "rule" at pages 7-10. How do you**  
21 **respond?**



1 A. There is no such “rule”, nor do the agreements discuss such matters. Under the agreements,  
2 compensation is determined by the nature of the traffic. Local traffic is subject to reciprocal  
3 compensation, and interexchange traffic is not.

4  
5 Mr. Cooper’s entire argument rests on the mistaken assumption that ISPs are “carriers,” even  
6 though the FCC has consistently classified ISPs as “end users.” Mr. Cooper is well aware  
7 that the only “carriers” involved in the completion of a call from a SWBT customer to an ISP  
8 end user customer of MCIWC or Brooks are SWBT and either MCIWC or Brooks. Thus,  
9 if we follow the logic rather than the rhetoric of Mr. Cooper’s imaginative discussion, the  
10 result would be that SWBT would compensate the Complainants for the traffic those carriers  
11 terminate when local calls are originated by SWBT’s local customers – as the contracts  
12 require.

13  
14 **Q. At page 10, Mr. Cooper asserts that SWBT does not have a retail relationship with its**  
15 **local service customers when they place calls to ISPs, at page 13 he asserts that SWBT**  
16 **does not bill its local customers for such calls, and at footnote 18 he asserts that SWBT**  
17 **does not receive any revenues from its end users for such calls. Do you agree?**

18 A. No. SWBT charges flat and measured retail local service rates to its end users for local calls  
19 to ISPs that subscribe to SWBT or CLEC local services. SWBT does not allow free local  
20 calling to its measured service customers when they call ISPs, nor does it allow free flat rate  
21 local service to customers that only call ISPs. It is irrelevant that the ISP also has a retail  
22 relationship with the calling party, just as any other business might have. What is relevant is

1 that it is local service that is being used by the calling party. SWBT bills for such calls and  
2 receives revenues.

3  
4 **Q. Mr. Cooper asserts that it does not matter that SWBT's end users call their ISPs by**  
5 **means of local dialing protocols, and that such calling is the same as Feature Group A**  
6 **(FGA) access provided to IXCs. Do you agree?**

7 A. No. As required by the FCC, ISPs are purchasing local service. Other local customers can  
8 call ISPs using local service. The calls terminate at the ISP end user's location under the  
9 contract language. FGA traffic does not terminate at the IXC switch and is not local. That  
10 is why the agreements make specific provisions for intercompany compensation for FGA  
11 traffic separate and apart from local reciprocal compensation, in Appendix FGA, but do not  
12 distinguish calls to ISPs from other local calls.

13 **Q. Mr. Halprin asserts that the local dialing method used by SWBT's end users to call**  
14 **MCIWC's and Brooks ISP end users is irrelevant. How do you respond?**

15 A. Mr. Halprin cites a number of "examples", but none in the context of applicability of the  
16 reciprocal compensation language of the agreements. Under the agreements the question is  
17 whether the parties to the call are within a local calling scope, not where they are located  
18 physically, and not how their calls are jurisdictionally classified.

19  
20 **Q. Mr. Cooper discusses SWBT's separations reporting at pages 14 and 21-23. How do**  
21 **you respond?**

1 A. Mr. Cooper conveniently glosses over the fact that it was only after these agreements were  
2 made that SWBT attempted to change its separations reporting practices and treat local calls  
3 to ISPs as interstate. As he admits, the FCC did not allow this change and still requires  
4 SWBT to report the traffic as intrastate.

5  
6 Mr. Cooper inaccurately describes what has transpired between SWBT and the FCC on this  
7 issue. The FCC said that ISPs are allowed to purchase services out of local tariffs as end  
8 users. Accordingly, the FCC considers the underlying costs to be intrastate. The FCC did not  
9 decide to move the costs to intrastate, but rather ordered SWBT not to move the costs to  
10 interstate. There is no basis for Mr. Cooper's description of the FCC's long term policy in  
11 this regard as a temporary reassignment of convenience.

12  
13 **Q. At page 15, Mr. Cooper professes that SWBT was never aware of any industry custom  
14 and practice of treating calls to ISPs as local. How do you respond?**

15 A. For all the reasons discussed in my direct testimony and this surrebuttal testimony, his position  
16 is simply untenable.

17  
18 **Q. Mr. Cooper discusses segregation of local calls to ISPs starting at page 16 and Mr.  
19 Halprin discusses the subject at pages 21-22. How do you respond?**

20 A. What Mr. Cooper conveniently ignores is the fact that if the parties meant to treat calls to  
21 ISPs as non-local, then they would have addressed segregation methods in the agreements.  
22 The parties did not agree to any segregation methods, did not agree that segregation was

1 necessary, and did not agree to help each other segregate such traffic. Instead, the parties  
2 agreed not to segregate the traffic.

3  
4 I find it incredible that Mr. Halprin contends now that the Complainants implicitly agreed to  
5 let SWBT figure out some way to separate this traffic, and that SWBT was implicitly content  
6 to develop a segregation methodology that requires CLEC verification to be precise without  
7 requiring CLECs to agree to participate in such a process. The absence of any discussion of  
8 such matters in the agreements only serves to confirm that segregation is an after-the-fact  
9 concept and that when the agreements were made there was no intent to segregate calls to  
10 ISPs from other local calls.

11  
12 **Q. Does this conclude your surrebuttal testimony?**

13 **A. Yes.**