

**APPENDIX A**

**SETTLEMENT AGREEMENT**

## SETTLEMENT AGREEMENT

The Consumer Protection and Safety Division of the California Public Utilities Commission (“CPSD”), and MCI Inc. and its predecessors, successors, affiliates, and assigns (“MCI” or “Respondents”) (collectively, the “Parties”) hereby agree upon the following terms for the settlement (the “Agreement”) of the Commission’s Order Instituting Investigation, I.05-04-018 (the “OII”).

### TERMS

#### **I. JOINT STATEMENT OF THE CASE**

##### **The Company**

The Parties submit the following joint statement as the basis for the Settlement Agreement:

1. MCImetro Access Transmission Services LLC (“MCImetro”), corporate identification number U-5253-C, is authorized by the Commission to provide local and long distance services in California. MCImetro is the primary competitive local exchange carrier subsidiary of MCI, Inc. MCImetro offers a variety of local and interexchange services to residential and commercial customers.

2. MCI Communications, Inc. (“MCIC”), corporate identification number U-5378-C, is authorized by the Commission to provide long distance services in California, MCIC is the primary interexchange carrier subsidiary of MCI, Inc. MCIC offers retail intraLATA and interLATA services to residential and commercial customers. When the Commission issued the OII, MCIC was known as MCI WorldCom Communications, Inc. By Advice Letter No. 464, dated September 26, 2005, the Commission was advised of the company’s name change.

3. MCI Network Services, Inc. ("MCINS"), corporate identification number U-5011-C, is authorized by the Commission to provide long distance services in California. MCINS is the interexchange subsidiary of MCI, Inc. that provides wholesale long distance service; it has no retail operations. When the Commission issued the OII, MCINS was known as MCI WorldCom Network Services, Inc. By Advice Letter 497, dated September 26, 2005, the Commission was advised of the company's name change. On October 4, 2005, by Advice Letter 498, MCINS filed for Commission authorization to transfer all its telecommunications assets to MCIC. Absent suspension of the Advice Letter, the authority requested will take effect on November 14, 2005.

4. The corporate identification number U-5278-C was formerly assigned to WorldCom Network Services, Inc., as a Commission authorized non-dominant interexchange carrier. In 2002, when the company no longer had any customers, it requested revocation of its certificate of public convenience and necessity (CPCN). The Commission granted revocation of the CPCN and cancellation of the corporate identification number in Resolution T-16673, dated August 8, 2002.

#### **The Prior Proceedings**

5. On July 20, 2000, the Commission and the State of California Attorney General's Office ("the parties") filed a joint civil complaint against Worldcom, Inc. and MCI Worldcom Communications, Inc. (Case No. 313730) in the Superior Court, County of San Francisco. The complaint alleged that MCI violated Business and Professions Code Section 17500 by making certain untrue or misleading statements through its marketing representatives and in its advertisements about MCI's calling plans and services, and violated Public Utilities Code section 2889.5 and 451 by converting certain consumers' long distance and local toll service to MCI

service without the prior authorization of the consumer. The complaint further alleged that, by not thoroughly informing subscribers of the nature and extent of services being offered, MCI violated Public Utilities Code Section 2890 and section 451 by placing unauthorized charges on subscribers' telephone bills. Additionally, the Complaint alleged that MCI violated Public Utilities Code section 532 by charging persons, firms, corporations, and other entities who were not MCI customers for services they did not order.

6. On March 7, 2002, the parties filed a stipulated Final Judgment and Permanent Injunction ("Final Judgment") with the Superior Court County of San Francisco. According to the Final Judgment, MCI agreed to pay the Plaintiffs up to \$10 million in civil penalties and investigative costs. MCI agreed to refrain from various business practices the Commission alleged it violated in its complaint, and agreed to implement new policies and procedures changing the manner in which the Company advertised, telemarketed, solicited its services, billed its customers, resolved customer complaints, handled collection and credit reporting actions against customers, and provided customer service to its customers.

7. MCI charges some of its customers a fee irrespective of whether there was usage in a given month (hereinafter referred to as an "MUF fee"). On June 1, 2002, MCI implemented an MUF fee of \$3 on its Basic Dial-1 customers with interstate service. Customers who did not generate at least \$3.00 in billings for long distance calls in a given month were charged the difference between \$3 and the amount of the charges for calls made. For example, if a customer made \$1.50 in long distance calls, the customer would be billed \$3 (\$1.50 for the call and \$1.50 to complete the \$3 minimum). MCI assessed the monthly Basic Dial-1 minimum charge to only those customers that have an existing Basic Dial-1 account. Residential customers who request MCI long distance service through their local exchange carrier ("LEC") are placed on the Basic

Dial-1 plan by MCI as a default choice until the customer notifies MCI of their calling plan choice. MCI refers to these accounts as LEC installed accounts.

8. In June 2002, CPSD began monitoring MCI's compliance with the terms of the Final Judgment. Specifically, CPSD monitored MCI's compliance with the advertising, telemarketing, billing and collection, and customer service requirements as set forth in the Final Judgment. Part of the monitoring process involved reviewing MCI written complaints filed with the Consumer Affairs Bureau ("CAB") during April 2002 through August 2004.

9. In addition to reviewing these consumer complaints, CPSD interviewed approximately seventy-seven (77) consumers who had registered complaints with the CAB. Many of these consumers were former subscribers of MCI's services, and had not been billed by MCI for some time. These former customers of MCI, however, alleged that subsequently MCI had opened a new account in their name and billed them an MUF.

10. In October 2003, CPSD initiated an investigation into MCI's practice of billing former customers an MUF after consumers had called MCI and requested that MCI cancel their service.

11. On April 21, 2005, the Commission filed the OII.

#### **Subsequent Events**

12. Prior to February 2003, MCI periodically purchased or received lists of telephone subscribers from the major LECs. This list is a "snapshot" of the customer list file from the LEC. The customer list file is also referred to as a "LEC Recon List." As the executing carrier, the LEC has the responsibility of maintaining a record of the primary interexchange carrier ("PIC") to which each consumer is subscribed. In industry vernacular, the consumer is "PIC'ed" to that carrier. The LEC Recon Lists which MCI received showed the consumers "PIC'ed" to

MCI according to LEC records. MCI also received information from LECs regarding changes in account information (for example, a name change when a subscriber gets married). If a telephone number appeared in the data received from the LEC for which MCI did not have an account, MCI created a new Dial-1 account for that line. After the institution of the MUF, however, this practice resulted in the consumer being charged an MUF, which led in turn to certain consumer complaints.

13. MCI has policies that address the situation in which a consumer calls to cancel his or her account. Historically, when a consumer contacted MCI to cancel long distance service, the consumer was advised to contact their LEC or their new long distance carrier of choice to insure the new consumer change was processed. This policy was in place because only the LEC, not MCI, has the ability to change the LEC records which identify the primary inter-exchange carrier for each consumer receiving local service from the LEC. MCI's policy was to cancel a consumer's account after confirmation was received from the LEC that the consumer had changed their primary interexchange carrier ("PIC") away from MCI. The process insured that a consumer would not be charged higher random rates when making long distance calls prior to the LEC changing the consumer's PIC. The consumer, however, would also continue to be charged an MUF or other plan fees until MCI received confirmation from the LEC that the consumer's PIC had been changed to a new long distance carrier.

14. MCI's prior cancellation practice was consistent with a Consent Decree that it entered into with the Federal Communications Commission (File No. E. 99-04) (the "Consent Decree") on February 29, 2000. That Consent Decree (which expired on March 1, 2003) stated in pertinent part:

“ . . . MCI WorldCom will ensure that for all customers that request disconnection from the Company as their preferred interexchange carrier, the Company will not remove the customer’s billing records until the Company receives notice from the customer’s LEC that the customer has cancelled his or her account with MCI WorldCom.” (emphasis added).

15. The Consent Decree was entered into at a time when consumers had fewer practical choices other than wireline through which to receive long distance service. Today, far more consumers are choosing non-wireline alternatives for long distance service than was the case five years ago. Accordingly, the concerns which informed the Consent Decree resolution—seeking to avoid customers who would be denied long distance access or charged higher, random rates for long distance access—are now substantially decreased.

16. Additionally, MCI has seen MUF billing issues arise (apart from LEC Reconciliation situations) from the timing of the information it receives from the LECs relating to canceling customer accounts, or through the LEC’s failure to send such information. MCI has been working to investigate the causes of these issues and institute operational enhancements to resolve these issues in consumers’ favor.

17. MCI’s continuing efforts to address MUF billing issues have resulted in dramatic decreases in California consumer “complaints”.<sup>1</sup> Complaints relating to MCI’s long distance plan and minimum fees have decreased from approximately 2,400 during the first quarter of 2003 to approximately 300 during the second quarter of 2005.

18. MCI has also utilized a liberal credit policy to satisfy complaints from consumers regarding minimum fees. This policy is described in more detail in paragraph 25.

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<sup>1</sup> All references to “complaints” or “complainants” in the Agreement utilize the definition for “complaint” set forth in the Final Judgment.

## II. MCI COMMITMENTS TO OPERATIONAL IMPROVEMENTS

19. MCI acknowledges that the complaints asserted by some consumers with CAB of inappropriate MUF billings warranted investigation and action by the CPSD to ensure compliance with the law and to protect consumer welfare. MCI's prior cancellation practice caused some customers that had requested cancellation of their MCI service to be charged an MUF if MCI did not receive a notice from the customer's LEC that the customer had cancelled. MCI recognizes the need to update its policies as the industry and consumer choices change and to address the important concerns raised by California consumers and the CPSD's investigation. Accordingly, and as set forth below, MCI has instituted and will maintain measures and policies designed to prevent practices such as are alleged in certain of the complaints.

20. MCI will institute and maintain the following operational improvements, subject to the limitations set forth in paragraphs 37 and 38. These operational improvements shall be applicable to all wireline long distance residential consumers and to MCI Mass Market small business customers.

21. MCI Long Distance Cancel Process. Effective June, 2005, MCI instituted a new cancel policy whereby the customer service representative is authorized to cancel a consumer's long distance service upon the consumer's request. MCI then provides the requesting consumer with notice advising him/her to select a new carrier and that if the consumer fails to select a new carrier his/her rates may increase. Following the cancellation, MCI offers billing at Dial-1 rates for a grace period, followed by a period during which service is blocked to prevent random usage charges. At the conclusion of the block period, any calls made by the cancelled consumer traveling over the MCI system will be billed at random rates. The new cancellation process has been designed to ensure that the consumer receives multiple notices relating to the effects of

cancellation. Included in the written notice that the consumer receives is a recommendation that the consumer contact his/her LEC or new carrier of choice to either request a designation of no long distance carrier or a new long distance carrier.

22. MCI Cancellation Process Change Objective. MCI's cancellation policy has been revised so that consumers who request cancellation will not be billed an MUF following the billing period in which the cancellation is requested.

23. "LEC Recon List" and Account Maintenance Installations. In February 2003, MCI ceased purchasing "LEC Recon Lists" from major LECs and using their lists to ensure that all consumers "PIC'ed" to MCI according to LEC records had an MCI account. MCI commits that it shall not create new accounts which include MUFs based upon reconciliation lists received from the LEC.

24. MCI also receives, from time to time, account maintenance information from the LEC. Account maintenance information includes such items as a consumer name change (e.g., if the consumer changed name as a result of marriage) or the correction of an address. Historically, MCI has created a new account for a customer if it received account maintenance information for a telephone number for which no account existed. This practice, although designed to prevent random billing charges, also caused some complaints to occur. MCI commits that it shall not create new accounts which include MUFs based upon account maintenance information received from the LEC.

25. Other Commitments Related to MUF Charges.

MCI is continually updating and refining its billing practices and information exchange practices with the LECs in order to ensure accurate billings of consumers and minimize consumer billing complaints, including complaints of customers contending that they have been

charged a MUF without authorization. For example, MCI has instituted a number of operational enhancements designed to eradicate consumer complaints relating to MUF billing arising out of the timing of information that MCI receives from the LEC. MCI shall continue to use good faith and commercially reasonable efforts to enhance its billing policies and procedures, particularly with regard to identifying cause and ultimately preventing complaints regarding alleged unauthorized billings of MUFs. MCI will also continue to use such efforts with respect to identifying and crediting consumers charged with an MUF where MCI determines that it is appropriate to do so.

26. Credit Policy. MCI has utilized a liberal credit policy pursuant to which a customer service representative is authorized and instructed to credit a consumer who communicates to MCI that he/she has been charged an MUF in a situation where the consumer contends that he/she has not authorized such a charge and has not utilized the service. MCI shall continue to instruct its customer service representatives to credit consumers who advise MCI that they have been charged an MUF without having authorized MCI to provide long distance service, unless there is evidence that the customer continues to utilize the service. MCI shall utilize commercially reasonable good faith efforts to identify, locate and, where appropriate, provide credits or refunds to consumers who have previously made complaints regarding the imposition of MUF fees, if they have not already received credits or refunds in connection with such complaints. MCI notes that it has credited 74 of the 77 consumers referenced in the OII. MCI estimates that it has credited in excess of \$1 million to date to California consumers in connection with MUF billing issues.

27. Pursuant to this policy, over 90% of persons who have complained about long distance plan or minimum fees have received credits during the period commencing with the first

quarter of 2003 through the second quarter of 2005. MCI commits to review, in all cases where sufficient records exist, the complaints of those remaining earlier complainants who did not receive credits during the time period referenced above, and issue credits to any persons so entitled pursuant to MCI's liberal credit policy.

### **III. MONETARY PAYMENT**

28. Pursuant to Public Utilities Code 2107 and 2108 and the California Public Utility Commissions Rules of Practice and Procedure 51, MCI and the CPSD have agreed upon a combination of consumer credits and a payment to the State General Fund. In addition to MCI's estimate that over \$1 million has already been credited to California consumers, MCI shall contribute \$2.3 million to the General Fund. This \$2.3 million financial payment will be reduced on a dollar for dollar basis for all MUF billing credits or refunds issued by MCI to California consumers from October 1, 2005 until May 31 2007, up to a ceiling of \$1 million (the "MUF Credits"). MCI will make a payment of \$1.3 million to the General Fund within 30 days after the Commission's approval of this Agreement. No later than September 30, 2007, MCI shall provide an accounting to the CPSD of the amount of the MUF Credits, and shall make a payment to the General Fund of any difference between \$1 million and the amount of the MUF Credits (if the MUF Credits are less than \$1 million). If the amount of the MUF Credits equals or exceeds the sum of \$1 million, MCI will not be required to make any further payment to the General Fund.

### **IV. DISMISSAL AND SETTLEMENT**

29. Scope and Effect of Agreement. This Agreement represents a full and final resolution of the OII, and the matters giving rise thereto, including, but not limited to, all potential claims, penalties, enforcement actions or investigations relating to complaints of

California consumers from June 2002 to present that they were charged an MUF without authorization. If the Commission does not approve this Agreement in full, it shall have no force and effect.

30. No Waiver. By entering into this Agreement, MCI does not waive its right to contest the extent of the Commission's jurisdiction or authority to impose any requirement of this Agreement in any other proceeding.

31. Other Proceedings. The Parties agree that neither the Joint Statement of Case nor anything contained in this Agreement constitutes a binding admission or concession in any other proceeding. The parties have entered into this Agreement to effect a compromise and settlement of the contested matters pending before the Commission.

## V. GENERAL TERMS

32. Severability. No individual term of this Agreement is assented to by any party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

33. Successors. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.

34. Knowing and Voluntary Execution. The Parties acknowledge each has read this Agreement, that each fully understands the rights, duties and privileges created hereunder, and that each enters this Agreement freely and voluntarily. Each Party further acknowledges that it has had the opportunity to consult with counsel and discuss the provisions hereof and the consequences of signing this Agreement, and that each Party or their counsel have made such investigation of the facts and law pertaining to the matters herein as they deem necessary, and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Agreement.

35. Authority to Execute Agreement. The undersigned acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency or employment.

36. Entire Agreement. The Parties expressly acknowledge that the consideration recited in this Agreement is the sole and only consideration of this Agreement, and that no representations, promises, or inducements have been made by the Parties or any director, officer, employee, or agent thereof other than as set forth expressly in this Agreement.

37. No Waiver or Modification. This Agreement constitutes the entire agreement between the Parties and no terms herein may be waived, modified or amended, except in a writing signed by both Parties. Either party may petition the Commission for a modification of this Agreement in the event of: 1) an order from a court or agency in conflict with a provision or provisions of this Agreement; 2) a change of law rendering performance of a provision or

provisions of this Agreement impracticable; or 3) a change in circumstances rendering the maintenance of some or all of the improvements referenced in Part II of the Agreement moot.

38. "Sunset" Clause. MCI's obligations as set forth in paragraphs 21, 26 and 27 of this Agreement shall expire two years from the effective date of this Agreement.

39. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

40. Execution in Counterparts. This Agreement may be executed by any of the Parties in counterparts with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement. A signature transmitted by facsimile shall be regarded as an original signature.

MCI, INC. AND AFFILIATES

Dated: 11/11/05

  
Maureen F. Del Duca  
MCI, Inc.  
1133 Nineteenth Street, N.W.  
Washington, D.C. 20036

CONSUMER PROTECTION AND  
SAFETY SERVICES DIVISION

Dated: 10/29/05

  
Richard W. Clark  
Director of Consumers Protection and  
Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dated: 10/29/05

Travis T. Foss  
Travis T. Foss  
Staff Counsel  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of "JOINT MOTION FOR APPROVAL OF AMENDED SETTLEMENT AGREEMENT" in

**I.05-04-018** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

**U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on November 14, 2005 at San Francisco, California.



Albert Hill

**NOTICE**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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(END OF APPENDIX A)