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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of AT&T Communications of the)
Southwest, Inc.'s Petition for Arbitration)
Pursuant to Section 252(b) of the Tele-)
communications Act of 1996 to Establish an)
Interconnection Agreement with South-)
western Bell Telephone Company.)

Case No. TO-97-40

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In the Matter of the Petition of MCI Tele-)
communications Corporation and Its Affiliates,)
including MCI metro Access Transmission)
Services, Inc., for Arbitration and Mediation)
Under the Federal Telecommunications Act)
of 1996 of Unresolved Interconnection Issues)
with Southwestern Bell Telephone Company.)

COMMISSION COUNSEL
Case No. TO-97-67 PUBLIC SERVICE COMMISSION

SECOND CONCURRING OPINION OF COMMISSIONER CRUMPTON

The majority of the Commission was correct in modifying and clarifying portions of its original decision in the Arbitration Order in consolidated case Nos. TO-97-40, filed by AT&T Communications of the Southwest, Inc. (AT&T), and TO-97-67 filed by MCI Telecommunications Corporation (MCI). While six issues were clarified or modified by the majority, I think the majority should have also reconsidered other issues. Nonetheless, the fact that the majority set ground rules and a schedule for setting permanent prices was reason enough for me to join in the decision.

Because I remain concerned about the discount and network element prices, I find it incumbent upon me to speak in a separate concurring opinion. In developing permanent prices, the parties along with Staff must identify and define the items that make up "price" in the context of the arbitration process. If there is a disagreement on this point, the disagreement must be conveyed to the Commission so that the Commission can decide what are the items and the definition of the items that make up

"price." With the Commission or agreed upon or disputed definitions in mind, the parties can then proceed to complete the objectives in each segment of the schedule.

I am encouraged by the majority's willingness to make modifications. However, I am equally discouraged by the Commission's inability at this time to address the following issues:

5. Sub-Loop Unbundling
8. Restrictions on Local Service Provider (LSP) Use of Unbundled Network Elements (UNEs)
23. How should network elements be priced? (d) Income Tax
36. Pricing Resale Services

Staff and Southwestern Bell Telephone Company (SWBT) have worked diligently on the technical feasibility of sub-loop unbundling. I accept Staff's assertions that the prescribed "...sub-loop unbundling has been recognized as technically feasible in several other jurisdictions." However, sub-loop unbundling requires decisions concerning how the unbundling should be accomplished. In the permanent pricing phase staff and the parties must agree on the method of unbundling.

SWBT made a compelling argument for placing limited restrictions on LSP use of unbundled elements. The majority once again demonstrated its unwillingness to grasp this subject. Perhaps Staff could visit a central office to improve its understanding. I am disturbed that there is a likelihood that Staff is misinformed. It should be the goal of all to protect the integrity of the network. I am not convinced that Staff understand this. Case in point, SWBT requested that AT&T and MCI be directed to coordinate the use of the network in order to prevent interference with other services.


The issue is one of preserving the integrity of the network. The majority opinion, unfortunately, was silent on the highly important matter of coordination.

Likewise, the record is clear that an allowance for income tax is warranted. All of the parties have allowed for income taxes in their models. Nonetheless, the majority failed to modify its ruling. The majority continues to be mistaken on this matter.

SWBT, in my opinion makes a strong case for including income taxes in the price of network elements.

Issue 36, "Pricing Resale Services," makes me uneasy. Nether Staff nor SWBT have convinced me that they understand this issue. Therefore, in addressing this issue during the 16 week schedule, the parties must make a greater effort to identify and define the items that make up the discount. The Commission has invested a great deal of time in this arbitration case. The parties can expect continued close scrutiny in this, the final stage.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harold Crumpton". The signature is written in black ink and is positioned above a horizontal line.

Harold Crumpton, Commissioner

Dated at Jefferson City, Missouri, on
this 30th day of January, 1997.