

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MCI Telecommunications Corporation,

Complainant,

v.

Southwestern Bell Telephone Company
and GTE Midwest Incorporated,

Respondents.

Case No. TC-96-439

REPORT AND ORDER

Issue Date:

March 18, 1997

Effective Date:

March 28, 1997

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OF THE STATE OF MISSOURI

MCI Telecommunications Corporation,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-96-439</u>
)	
Southwestern Bell Telephone Company)	
and GTE Midwest Incorporated,)	
)	
Respondents.)	
)	

APPEARANCES

Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston Avenue, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

James C. Stroo, Associate General Counsel-Midwest, GTE Operations, 1000 GTE Drive, Wentzville, Missouri 63385, for GTE Midwest Incorporated.

Diana J. Harter, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Paul S. DeFord and Charles W. McKee, Lathrop & Gage, L.C., Suite 2500, 2345 Grand Boulevard, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Mark W. Comley and Robert K. Angstead, Newman, Comley & Ruth, 205 East Capitol Avenue, Post Office Box 537, Jefferson City, Missouri 65102, for CompTel-Mo.

Michael F. Dandino, Senior Public Counsel, and Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Eric B. Witte, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: L. Anne Wickliffe, Deputy Chief.

REPORT AND ORDER

Procedural History

MCI Telecommunications Corporation (MCI) filed a complaint on June 17, 1996 against Southwestern Bell Telephone Company (SWBT) and GTE Midwest Incorporated (GTE) asking the Commission to order SWBT and GTE to immediately submit all interconnection agreements negotiated before and after the enactment of the Telecommunications Act of 1996 (the Act), to disclose the terms and conditions of those agreements to MCI, and make available to MCI the services and elements provided under those agreements as required by § 252 of the Act. SWBT filed an answer and motion to dismiss on June 24, 1996, arguing that § 252(a)(1) of the Act was intended to be limited to interconnection agreements entered into in anticipation of the Act and not to include agreements between incumbent local exchange telephone companies entered into long before the 1996 Act. SWBT also argued that the Act does not require state commission approval of agreements between incumbent local exchange companies, but only agreements between competing local exchange telephone companies. GTE filed its answer on July 5, 1996, stating that the primary toll carrier agreement and expanded local calling agreements referred to in the complaint are not interconnection agreements under the terms of § 252 of the Act. GTE concurred in SWBT's motion to dismiss.

The parties met in prehearing conference on July 8, 1996, where the applications to intervene filed by AT&T Communications of the Southwest, Inc. and CompTel-Mo were granted on the record. The parties filed a stipulated set of facts, filed briefs, and argued their positions orally before the Commission on August 1, 1996. Because a Federal

Communications Commission (FCC) rulemaking order was expected to which would address the issues in dispute, the parties were permitted to submit supplemental briefs following that decision, which was issued on August 8, 1996 (the Interconnection Order).¹

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

The Commission has reviewed the pleadings, briefs, transcript, and FCC Interconnection Order, and finds that MCI's complaint should be dismissed. The interconnection order finds that preexisting agreements must be submitted to state commissions for approval under § 252 of the Act, including agreements between incumbent local exchange carriers. The FCC did not order the immediate filing of these preexisting agreements but left the time frames for these filings in the discretion of state commissions. The FCC did order that preexisting agreements between Class A carriers² be filed for approval by June 30, 1997. Missouri local exchange companies qualifying as Class A carriers are Southwestern Bell Telephone Company, United Telephone Company of Missouri d/b/a Sprint, and GTE Midwest Incorporated. It is within this Commission's discretion to require the

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order (Fed. Comm. Comm'n, Aug. 8, 1996); partially stayed by *Iowa Util. Board v. FCC*, No. 96-3321 (8th Cir., Oct. 15, 1996) (order granting stay pending judicial review).

² Class A carriers are companies "having annual revenues from regulated telecommunications operations of a hundred million dollars or more." 47 C.F.R. § 32.11(a)(1)

prefiling of agreements between Class A carriers earlier than June 30, 1997, but the Commission's current caseload would make an earlier filing date impractical. MCI will have the same opportunity to participate in proceedings for approval of interconnection agreements as any other interested party.

The Commission finds that the complaint filed by MCI against SWBT and GTE does not set forth any act or thing done or omitted to be done by either of these public utilities which is in violation of any Commission rule, order or statute, and the complaint should be dismissed.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:


The parties to this case are public utilities that come under the jurisdiction of the Commission pursuant to § 386.250(2), RSMo Supp. 1996. Complaints before the Commission are governed by § 386.390, RSMo 1994, which provides that a complaint may be made by "setting forth in writing any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge . . . claimed to be in violation of law, or of any rule or order or decision of the commission." Based upon its findings of fact, the Commission determines that the complainant has failed to state a claim upon which relief may be granted.

IT IS THEREFORE ORDERED:

1. That the complaint filed by MCI Telecommunications Corporation on June 17, 1996, is dismissed.

2. That this Report And Order shall become effective on March 28,
1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., McClure, Crumpton
and Drainer, CC., concur and
certify compliance with the
provisions of Section 536.080,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 18th day of March, 1997.