

CURTIS, OETTING, HEINZ, GARRETT & SOULE, P. C.
ATTORNEYS AT LAW

130 SOUTH BEMISTON, SUITE 200
ST. LOUIS, MISSOURI 63105
(314) 725-8788
FACSIMILE (314) 725-8789

LELAND B. CURTIS

September 4, 1997

FILED

SEP 04 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

Cecil Wright, Executive Secretary
Missouri Public Service Commission
Truman State Office Building, 5th Floor
301 West High Street
Jefferson City, Missouri 65101-1517

Re: Case No. TO-98-21

Dear Mr. Wright:

Enclosed herewith for filing in the above-referenced case please find an original and fifteen (15) copies of MCI's Response to SWBT's Motion to Dismiss. Please file stamp the extra copy and return in the enclosed self-addressed, postage prepaid envelope to the undersigned for our records.

Very truly yours,


Leland B. Curtis

LBC:dn

Enclosures

cc. General Counsel
Office of Public Counsel
Southwestern Bell Telephone
AllTel
GTE
Ameritech

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

SEP 04 1997

MISSOURI
PUBLIC SERVICE COMMISSION

Southwestern Bell Telephone Company)
and Alltel Missouri for Interconnection)
Agreement between incumbent local)
exchanges carriers pursuant to order issued)
in Case No. TC-96-439.)

Case No. TO-98-21

MCI'S RESPONSE TO SWBT'S MOTION TO DISMISS

Come now MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc (collectively MCI) and for their Response to SWBT's Motion to Dismiss state to the Commission:

Introduction

On March 18, 1997, the Commission dismissed Case No. TC-96-439 in reliance upon the FCC's determination that interconnection agreements which were made before the enactment of the Telecommunications Act of 1996 did not have to be filed for approval under section 252(a) of the Act until June 30, 1997. Since then, two things have happened. First, SWBT and GTE have submitted some but not all of such pre-existing interconnection agreements to the Commission as directed. Second, the Eighth Circuit Court of Appeals has ruled that the FCC did not have jurisdiction to set the June 30, 1997, deadline.

SWBT now resurrects by a footnote reference its erroneous arguments from Case No. TC-96-439 that section 252(a) does not mean what it says: "any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996 shall be submitted to the State commission under subsection (e) of this section." MCI responded in full to such arguments in Case No. TC-96-439 and asks the Commission to take notice of the Stipulation of Facts submitted by the parties in that case as well as MCI's Response to SWBT's Motion to Dismiss Complaint and MCI's

Brief filed therein. There is no mistaking the meaning of section 252(a): agreements such as those submitted herein must be so submitted for approval by the Commission under section 252(e).

Section 252(a) of the Telecommunications Act of 1996 unambiguously requires that incumbent local exchange carriers such as SWBT and GTE submit their existing interconnection agreements, such as the PTC Plan contracts, SS7 agreements and EAS agreements under which they interconnect with each other and other incumbents, to the Commission for review. Upon conclusion of such review and elimination of any provisions which violate Section 252(e), the agreements would be approved and become available to other carriers such as MCI under Section 252(i). The availability of such interconnection agreements on a nondiscriminatory basis is a key component to the development of competition as envisioned by the Telecommunications Act. The incumbents are waging a defensive delay strategy across the country, contrary to their obligation to negotiate interconnection in good faith under Section 252(b)(5), in which they unsuccessfully attempt to retain their existing interconnection agreements and the benefits thereof solely to themselves without any legitimate basis.

The Commission should put an end to the delay by denying SWBT's Motion to Dismiss and by ordering SWBT and GTE to comply with the Commission's Report and Order in Case No. TC-96-439 and submit their other agreements immediately. The Commission must act quickly with regard to the agreements submitted on June 30, 1997, as it only has until September 26, 1997 to complete its review. See Section 252(c)(4) of the Act. With so little time remaining, the Commission should schedule a hearing immediately.

Statement of Facts

The parties to Case No. TC-96-439, including SWBT and GTE, submitted a stipulation of facts which stipulates to the factual matters set forth in MCI's Complaint in that case, which can be summarized as follows:

a. MCI is a "telecommunications carrier" as defined in Sections 3, 251, and 252 of the Telecommunications Act of 1996.

b. SWBT and GTE are "incumbent local exchange carriers" as defined in Section 252(j) and Section 251(h) of the Telecommunications Act of 1996 within their respective existing service areas in Missouri.

c. SWBT and GTE are parties to about 40 agreements with other incumbent local exchange carriers, including each other, under the auspices of the PTC Plan, and another 16 agreements with other incumbent local exchange carriers regarding Extended Area Service (EAS). All of these agreements were made before the effective date of the Telecommunications Act of 1996.

d. MCI purchases services from SWBT and GTE throughout their respective Missouri service areas and has requested to negotiate interconnection, services and network elements from SWBT and GTE pursuant to Sections 251 and 252 of the Telecommunications Act of 1996.

Samples of the PTC Plan agreements were put into the record in Case No. TC-96-439 together with the stipulation. These agreements fall into two categories, agreements between primary toll carriers such as SWBT and GTE, and agreements between primary toll carriers and secondary carriers. Summaries of the subject matter and contents of these agreements are attached to MCI's Brief in Case No. TC-96-439 as Highly Confidential Schedules, as follows:

HC Schedule 1 - Summary of PTC-to-PTC agreements;

HC Schedule 2 - Summary of PTC-to-SC agreements.

Samples of EAS agreements were put into the record in Case No. TC-96-439 together with the stipulation. A summary of the subject matter and contents of these agreements is attached to MCI's Brief in Case No. TC-96-439 as a Highly Confidential Schedule, as follows:

HC Schedule 3 - Summary of EAS agreements.

Now, SWBT has submitted SS7 agreements with Alltel, Ameritech and GTE (Case No. TO-98-21), and an EAS agreement with Ameritech (Case No. TO-98-22), and GTE has submitted agreements it has made with SWBT and United (Case No. TO-98-23). These filings fall significantly short of the 56 agreements identified in Case No. TC-96-439.

Argument

The PTC, SS7 and EAS agreements constitute interconnection agreements subject to Section 252 of the Telecommunications Act of 1996 which must be submitted by SWBT and GTE for approval of the Commission.

Section 252(a) requires that "any interconnection agreement negotiated [by an incumbent local exchange carrier] before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section." This provision expressly applies to all interconnection agreements negotiated by incumbent local exchange carriers like SWBT and GTE. Section 252(a) makes no distinction between agreements negotiated pursuant to Section 251 (which could only be agreements negotiated after that section took effect), agreements negotiated in anticipation that some draft version of Section 251 would ultimately take effect, or agreements negotiated without any thought given to Section 251 or any unofficial or draft version of Section 251.

Rather, it expressly applies to all interconnection agreements of incumbents like SWBT and GTE which were made before the effective date of the Act (February 8, 1996).

Section 252(e)(1) requires that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Like Section 252(a), this provision applies to all interconnection agreements negotiated by incumbent local exchange carriers like SWBT and GTE, whether negotiated before the enactment of the Telecommunications Act or after. Again, there is no requirement that the negotiating incumbent exercised clairvoyance and entered the agreement in anticipation of the Act.

Section 252(e)(2) requires the Commission to reject any negotiated interconnection agreement if the agreement "discriminates against a telecommunications carrier not a party to the agreement" or if the agreement "is not consistent with the public interest, convenience, and necessity." Again, this provision applies to all interconnection agreements negotiated by incumbent local exchange carriers like SWBT and GTE, including those made before the Act.

Section 251(a) provides that "each telecommunications carrier has the duty - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." SWBT and GTE have this duty to MCI and every other telecommunications carrier, no matter when or where such other carrier commenced or commences operations. SWBT's and GTE's duty is not limited to carriers competing directly within their respective service areas, but also includes carriers operating in adjacent areas that require interconnection.

Section 251(b)(5) provides that each local exchange carrier has "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." SWBT and GTE have this duty to MCI and every other telecommunications carrier, no matter when

or where such other carrier commenced or commences operation. This duty is not limited to head-to-head competitors, but includes adjoining carriers.

Section 251(c)(2) provides that each incumbent local exchange carrier has "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

SWBT and GTE have this duty to MCI and every other telecommunications carrier, whenever such carrier makes the request, no matter where it is doing business. SWBT and GTE cannot discriminate between companies to which they provide interconnection.

Under the PTC agreements, SS7 agreements and extended area service agreements, one incumbent carrier such as SWBT or GTE is undeniably providing interconnection to another telecommunications carrier within the meaning of "interconnection" as the word is used in Sections 251 and 252 as outlined above. With regard to the PTC agreements, the Commission itself recognized that the implementing agreements would be interconnection agreements from the outset of the PTC Plan. See, e.g., 29 Mo PSC (NS) at 255 ("Contracts will be needed under the plan between PTCs and between PTCs and SCs that set out billing arrangements, facility meet points and interconnection agreements for networking purposes."). GTE has admitted the point at least as to

EAS agreements in its July 12, 1996, comments to the Commission in Case No. TO-96-135 regarding the PTC Plan, at page 8 ("However, existing EAS interconnection agreements may need to be renegotiated for parity between competitive local service providers (CLECS) and incumbent local service providers (ILECS)"). MCI requests the Commission to take notice of GTE's said comments in this proceeding.

The Act had to address all preexisting agreements. Otherwise, new companies will not be able to compete for they will only be able to get nondiscriminatory agreements within incumbent territories, and be stuck with unfavorable or even no agreements to cross into another incumbent's territory. GTE and SWBT would each be able to favor the other as to the terms and conditions of interconnection at their respective service area boundaries. The Act does not allow such anticompetitive discrimination. Each incumbent must treat alike all carriers, new or incumbent, including regarding interconnection agreements such as the PTC, SS7 and EAS arrangements. New companies must be afforded the same arrangements to compete. To assure there is no discrimination, the Act requires preexisting agreements to be submitted for Commission examination.

Accordingly, the Commission should deny SWBT's Motion to Dismiss and require SWBT and GTE immediately to comply with the Report and Order in Case No. TC-96-439 by submitting all other interconnection agreements for review under section 252 of the Telecommunications Act of 1996. The Act expressly requires all interconnection agreements to be submitted, publicized and approved under Sections 251 and 252. There is no reasonable interpretation under the Act other than that such submission must take place immediately for existing agreements, and upon negotiation of new ones. The Act does not contemplate a long transition to competition - to the contrary it mandates expedition. Any contention that the absence of a specific submission time in the Act means

that incumbent local exchange carriers can submit existing agreements when and if they deem it appropriate has no merit and serves only to demonstrate the need for an immediate order from the Commission.

While the PTC agreements will likely be altered as a result of resolution of Case No. TA-97-217, the incumbents must nonetheless submit such agreements for immediate review. Any future changes will also have to be submitted, as the Commission has required of agreements between incumbents and new entrants.

WHEREFORE, MCI prays the Commission to deny SWBT's Motion to Dismiss and order SWBT and GTE immediately to comply with the Report and Order in Case No. TC-96-439 by submitting all other interconnection agreements pursuant to the requirements of section 252(a) of the Telecommunications Act of 1996. The Commission must complete this proceeding by September 26, 1997 under section 252(e)(4) of the Act, so it should schedule a hearing immediately.


Respectfully Submitted,

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.



Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

MCI Telecommunications Corporation

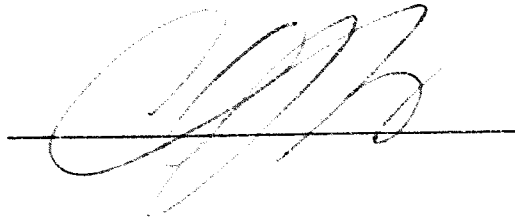


Stephen F. Morris, Texas Bar #14501600
701 Brazos, Suite 600
Austin, Texas 78701
(512) 495-6727
(512) 477-3845 (FAX)

Attorneys for MCI Telecommunications Corporation
and MCImetro Access Transmission Services, Inc.

CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing was served upon the parties identified in the attached service list on this 4 day of September, 1997, by placing same in a postage paid envelope and depositing in the U.S. Mail.



Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Leo J. Bub
Southwestern Bell Telephone Co.
100 North Tucker Blvd., Room 630
St. Louis, Missouri 63101-1976

Trip England
Sondra Morgan
AllTel Missouri
Brydon, Swearengen & England
P.O. Box 456
Jefferson City, MO 65102-0456

James Stroo
GTE Midwest
1000 GTE Drive
Wentzville, Missouri 63385

James Mauze'
Thomas Pulliam
Ottsen, Mauze', Leggat & Betz
112 So. Hanley Rod
St. Louis, Missouri 63105