



Association for Local Telecommunications Services

EX PARTE OR LATE FILED

DIRECT DIAL: (202) 466-3046

July 24, 1996

RICHARD J. METZGER
GENERAL COUNSEL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ms. Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20036

Re: CC Docket No. 96-98; Filing of Pre-1996 Act Interconnection Agreements with State Commissions Under Section 252(a)(1) of the 1996 Act

Dear Ms. Keeney:

Enclosed is the Public Utility Commission of Texas's ruling of June 26, 1996, holding that: "Section 252(a)(1) of the Federal Telecommunications Act of 1996 (FTA96) requires that 'any interconnection agreement negotiated before the date of enactment of FTA 96 shall be submitted to the State commission under subsection (e) of this section.'" Also enclosed is the July 18, 1996, decision of the Public Service Commission of Wisconsin reversing its order of May 17th (which we previously provided to you), and concluding that this phrase in Section 252(a)(1) is only: "intended to make subject to approval interconnection agreements whose execution occurred after February 8, 1996, but whose negotiations may have occurred prior to that date." The WPSC then exercised its state authority to require that most interconnection agreements predating February 8, 1996, be filed for informational purposes.

ALTS agrees with the Texas PUC (as well as the Arkansas PSC, whose opinion we previously shared with you), and respectfully differs with the Wisconsin PSC. Like NARUC, we find the statutory filing requirement of Section 252(a)(1) to be entirely clear.¹ However, even if the statutory language were less plain, there are compelling policy reasons why pre-February 8th interconnection agreements should be filed for state approval.

¹ See NARUC's Committee on Communications, briefing document dated February 26, 1996: "All interconnection agreements, including those in existence prior to date of enactment, must be submitted to the State Commissions for approval . . . State Commissions must approve all negotiated interconnection agreements, including voluntary agreements completed prior to enactment," emphasis supplied.

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As the RBOCs have acknowledged, ILECs will compete with one another and new entrants using their pre-February 8th agreements.² If these agreements are not submitted for state approval as required by Section 252(a)(1), new entrants would lose their right under Section 252(i) to request the same arrangements -- a right which assures non-discriminatory treatment of new entrants -- because Section 252(i) is limited to state approved interconnection agreements.

Absent requiring that pre-February 8th agreements be filed and approved by the states -- and thus assuring CLECs of their rights under Section 252(i) -- a new entrant seeking similar arrangements would have to file an interconnection request, gain discovery of all relevant pre-February 8th agreements, and then manage to obtain similar arrangements through arbitration. Obviously, this would create a substantial additional burden for new entrants.³

The ILECs try to claim it would be unfair to treat pre-February 8th agreements like those negotiated after enactment of the 1996 Act because the earlier agreements were negotiated under monopoly conditions to reflect the special needs of smaller independents. This claim is unavailing because any pre-February 8th interconnection agreements that were negotiated to protect the economic interests of particular categories of companies can be preserved by state commissions from inappropriate arbitrage via their powers under the "public convenience and necessity standard" of Section

² April 12, 1996, letter of Gary R. Lytle, Ameritech Vice President Federal Relations: "In a competitive environment, customers will change providers, traffic flows will change, and adjacent carriers, which formerly did not compete for customers, have the opportunity to compete alone or in combination with other providers;" emphasis supplied. The importance of ILEC-to-ILEC exchanges of competitive traffic is also underscored by the recent interconnection agreement executed between Pacific Bell and GTE.

³ In addition to making pre-February 8th agreements available to new entrants under Section 252(i), filing and approval of such agreements also provides indisputable evidence as to the technical feasibility of various forms of interconnection. Given ILEC contentions that discovery should be limited in interconnection negotiations, and the potential game playing inherent in the discovery process, filing and approval is the only means of assuring disclosure of all technical forms of interconnection found in pre-February 8th arrangements.

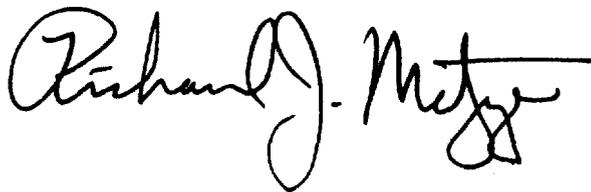
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252(e)(2(ii)). The state commissions could effectively create special categories for such agreements so long as they operated in a competitively neutral manner, and were consistent with Section 254.

If, on the other hand, state commissions fail to address pre-February 8th agreements and do not create robust, competitively neutral, rules as to how they will be made available to non-parties, there will be immense incentives to misuse those arrangements. For example, companies enjoying beneficial interconnection agreements would have a distorted incentive to enter competitive markets, given their artificial interconnection cost advantage. In some cases, that advantage might even cause some competitors to consider buying such a company simply to take advantage of its special pre-February 8th interconnection arrangement.

While the ILECs may claim that they would never think of using their pre-February 8th agreements in such a fashion, the creation of a sound competitive environment should rest on more than assurances from incumbents. ALTS respectfully requests the Commission to adopt the Texas and Arkansas commissions' interpretation of Section 252(a)(1), and order that all pre-February 8th interconnection arrangements be filed with state commissions for approval pursuant to Section 252(e).

Best regards,

A handwritten signature in black ink, appearing to read "Richard J. Metzger". The signature is fluid and cursive, with a long horizontal stroke at the end.

cc: L. Atlas
W. Caton
R. Welch

PUC PROJECT NO. 16101

File

IN THE MATTER OF NEGOTIATED § PUBLIC UTILITY COMMISSION
INTERCONNECTION AGREEMENTS §
OF TELECOMMUNICATIONS § OF TEXAS
CARRIERS §

ORDER

Section 252(a)(1) of the federal Telecommunications Act of 1996 (FTA96)¹ requires that "any interconnection agreement negotiated before the date of enactment of [FTA96] shall be submitted to the State commission under subsection (e) of this section." To fulfill this submission requirement, the Public Utility Commission of Texas (Commission) orders that all non-rural incumbent local exchange carriers (ILECs) subject to the Commission's jurisdiction under the Public Utility Regulatory Act of 1995 (PURA95)² file all existing jurisdictional interconnection agreements negotiated prior to February 8, 1996 in this project on or before Monday, July 15, 1996.

The term "existing jurisdictional interconnection agreement" means any agreement negotiated by an ILEC with any other ILEC, other local exchange carrier, or any other telecommunications carrier for telecommunications-related service within the State of Texas that had not expired by its own terms on or before February 8, 1996. The term "telecommunications-related service" means services involving at least one of the following: interconnection, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, unbundled access, or collocation. The term "rural" ILEC refers to an ILEC that qualifies for the exemptions, suspensions, or modifications to FTA96 §§ 251(b) or (c) in accordance with FTA96 §§ 251(f)(1) or (2), and PURA95 § 3.461.

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151, *et seq.*).

² TEX. CIV. STAT. ANN. art. 1446c-0 (Vernon Pamphlet 1996).

I. Discussion.

On April 19, 1996, the Commission published a request in Project No. 15344 for comments on the effect of FTA96 on the Commission's authority and responsibilities under PURA95. 21 Tex. Reg. 3476 (April 19, 1996). The first three questions posed by the Commission ask whether FTA96 § 252(a)(1) requires that ILECs file all pre-enactment interconnection agreements with the Commission and, if so, when and in what type of forum.

ILECs and non-ILECs (or "interconnectors") who filed responses to these first three questions disagree over the scope of the filing requirements established in FTA96 § 252(a)(1).³ Generally, the ILECs argue that they should not be required to file "all" pre-enactment agreements. Instead, they argue that Congress meant to require the filing of either: (a) only those agreements negotiated in accordance with sections 251 and 252; or alternatively (b) only those pre-enactment agreements negotiated between an ILEC and the specific telecommunications carrier who has invoked the interconnection negotiation procedures in accordance with FTA96 §§ 251 and 252. The interconnectors, on the other hand, argue that section 252(a)(1) explicitly requires the ILECs to file all pre-enactment interconnection agreements negotiated with any party.

Based on these responses, and its own review and analysis of the statutory language, the Commission concludes that non-rural ILECs must file all existing jurisdictional interconnection

³ Parties filing comments were: MCI Telecommunications Corp. (MCI); Sprint; AT&T Communications of the Southwest, Inc. (AT&T); Time Warner Communications, TCI Communications, and the Texas Cable & Telecommunications Association (collectively Time Warner); GTE Southwest Inc. (GTE); Southwestern Bell Telephone Company (SWB); and the Texas Telephone Association (TTA).

The "ILEC" group is comprised of GTE, SWB, and TTA. TTA did not file individual comments, but instead adopts the comments filed by SWB.

MCI, AT&T, Sprint, and Time Warner comprise this "interconnector" group.

agreements that were negotiated prior to enactment of FTA96. Specifically, the Commission concludes:

1. section 252(a)(1) explicitly requires the submission of "any" pre-enactment agreement;
2. the language in section 252(a)(1) does not suggest that only a limited category of pre-enactment interconnection agreements is to be submitted;
3. the published legislative history of section 252(a)(1) does not provide a compelling justification to limit the explicit submission requirement set forth in the section;
4. submission of only post-enactment agreements (as suggested by GTE) is contrary to the clear language of section 252(a)(1) which states that any agreements negotiated "before the date of enactment" of FTA96 are to be submitted;
5. submission of the limited category of pre-enactment agreements negotiated with the carrier who is currently in negotiation with the ILEC will not allow the Commission and other parties to determine whether other, non-disclosed pre-enactment agreements are discriminatory *vis a vis* post-enactment agreements;
6. submission of all pre-enactment agreements will allow the interconnectors and the Commission to review the terms and conditions that the ILECs have previously negotiated with other parties;
7. review of all pre-enactment interconnection agreements will assist the interconnectors in negotiating agreements that will satisfy the non-discriminatory and public interest, convenience, and necessity requirements of FTA96 § 252(e)(2);
8. review of all pre-enactment interconnection agreements will allow the Commission to carry out its responsibility under FTA96 § 252(e)(1) and (2) to approve negotiated agreements, and

to reject such agreements only if they are found to be discriminatory "against a telecommunications carrier not a party to the agreement" or not consistent with the public interest, convenience, and necessity; and

9. ILECs that qualify as "rural" carriers under FTA96 § 251(f)(1), or small local exchange carriers under FTA96 § 251(f)(2), are not required to file prior agreements because these carriers are not subject to the requirements of section 251(c) at this time. Further, carriers that have been granted a suspension or modification in accordance with section 251(f)(2) are not subject to the requirements of section 251(b) at this time. ILECs that negotiated prior agreements with rural ILECs are not exempted from filing such prior agreements.

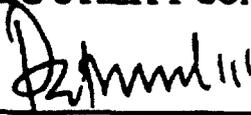
The Commission further concludes that all pre-enactment agreements should be filed in this omnibus project, rather than in the individual proceedings that may be established to review the individual new interconnection agreements negotiated (or arbitrated) between the ILECs and new entrants. Filing all pre-enactment agreements in this omnibus project will relieve the burden on ILECs of having to file all pre-enactment agreements in each individual proceeding between the ILEC and a new entrant. Filing in an omnibus forum will also allow the Commission and all parties to review proposed negotiated agreements in the context of all other agreements previously negotiated by a particular ILEC (or ILECs).

II. Conclusion and Ordering Paragraph.

All non-rural ILECs subject to the jurisdiction of the Commission are ordered to file all existing jurisdictional interconnection agreements negotiated prior to February 8, 1996 as provided in this Order on or before Monday, July 15, 1996.

SIGNED AT AUSTIN, TEXAS the 26th day of June, 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD III, CHAIRMAN



ROBERT W. GEE, COMMISSIONER



JODY WALSH, COMMISSIONER

ATTEST:



**PAULA MUELLER
SECRETARY OF THE COMMISSION**



Public Service Commission of Wisconsin

Cheryl L. Parrino, Chairman
Scott A. Neitzel, Commissioner
Daniel J. Eastman, Commissioner

Jacqueline K. Reynolds, Executive Assistant
Lynda L. Dorr, Secretary to the Commission
Steven M. Schur, Chief Counsel

To: All Local Exchange Carriers

Re: Investigation of the Implementation of the Telecommunications
Act of 1996 in Wisconsin

05-TI-140

At its open meeting of July 11, 1996, the Commission reopened the record in this docket and, upon further reconsideration, rescinded its May 17, 1996 letter order that required Wisconsin Bell, Inc. ("Ameritech"), GTE North Incorporated ("GTE") and all Wisconsin independent companies (ICOs) to file with the Commission and obtain approval of all agreements with other providers covering telecommunications services.

After reviewing the record in this docket, the Commission determined that the language in 47 U.S.C. § 252(a)(1) to require the approval of "any interconnection agreement negotiated before the date of enactment" had a more limited purpose. The Commission found that a more reasonable interpretation of this statutory provision is that the phrase is intended to make subject to approval interconnection agreements whose execution occurred after February 8, 1996, but whose negotiations may have occurred prior to that date. The Commission, therefore, rescinds its May 17, 1996 letter order requiring the approval of all telecommunications agreements with other providers covering telecommunications services. The extended area service (EAS), cellular and direct interconnection agreements already filed in compliance with the letter order shall not be approved by the Commission but will be placed on file.

The Commission did find, however, that it is necessary to require incumbent local exchange carriers (ILECs) to file certain agreements, in addition to the EAS, direct interconnection and cellular agreements, for the Commission to use in evaluating 47 U.S.C. § 251-type agreements regarding the merits of any claim by an ILEC that it could not provide a form of interconnection to a new entrant. The Commission is requesting the filing of the pre-Act agreements pursuant to its statutory powers in s. 196.25, Stats. The Commission, however, determined that filing of toll service agreements was unnecessary, considering that 47 U.S.C. § 251-type interconnection agreements deal with the local exchange market. The Commission further clarified that infrastructure sharing agreements under 47 U.S.C. § 259, are not subject to filing for approval as interconnection agreements under 47 U.S.C. § 252.

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The Commission, therefore, is requiring Ameritech, GTE and the ICOs to file EAS. extended community calling (ECC), cellular, direct interconnection, 911, directory assistance, directory listings, operator services, and signalling system 7 pre-Act agreements that exist with other telecommunications providers (see the attached list of definitions for these services). However, such contracts and agreements which had expired and had not been renewed and agreements which had been completely terminated and/or renegotiated prior to February 8, 1996, (the date on which the Act became effective) need not be filed. Likewise, contracts which have expired between February 8, 1996, and the date of this order, and have not been renewed or renegotiated, also need not be filed. To facilitate the referencing of these agreements, a summary will be required for each type of interconnection agreement currently in effect. The summary shall identify the other party, the date of agreement, the service(s) exchanged and the billing method (offsets, cash, bill-and-keep), but not specifying actual compensation levels if determined in the contract. The summary listing for each type of interconnection agreement should be filed nonconfidentially to permit new entrants a legitimate opportunity to know of, and review, agreements relevant to their opportunities to negotiate interconnection agreements.

Agreements and summaries should be filed with the Commission according to the following schedule. Five copies are required of the agreement, cover letters and supporting summary. Only one copy of a confidential agreement need to be filed. The agreements should be addressed to Lynda L. Dorr, Secretary to the Commission, Public Service Commission of Wisconsin, P.O. Box 7854, Madison, Wisconsin 53707-7854.

All agreements should be filed as joint filings, with both providers filing cover letters. The joint filings will prevent duplicate filings and problems due to an agreement being filed simultaneously as both confidential and nonconfidential. The providers should also jointly agree on whether the agreement will be filed under confidential cover. If the agreement is to be confidential, it must be accompanied by the appropriate form. Only one copy of a confidential agreement needs to be filed.

Companies need only file those agreements that have not already been filed. For example, Ameritech and GTE have already filed all EAS agreements between them and the independent companies. The ICOs are to file all their remaining EAS agreements by November 1, 1996. At that time, the ICOs will not need to refile those agreements which were filed by Ameritech and GTE on July 1, 1996.

Where companies have a number of agreements that have the same rates, terms and/or conditions, the company should file five copies of a sample of the agreement or identical language, together with a list of all identical agreements or agreements using that language. If the terms and conditions of the agreements are the same, but the rates differ, the company can file a sample of the terms and conditions, together with copies of just the pages from each agreement showing the differing rates.

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Schedule

Agreements between telecommunications providers and supporting summaries must be filed according to the following schedule.

By August 1, 1996

Ameritech and GTE File: SS7 agreements and supporting summary.

ICOs File: None.

By August 19, 1996

Ameritech and GTE File: Summary of all pre-Act direct interconnection, cellular and EAS agreements that were filed on July 1, 1996.

ICOs File: None.

By September 3, 1996

Ameritech and GTE File: 911, DA, OS and directory listing agreements, and supporting summaries.

ICOs File: None.

By October 1, 1996

Ameritech and GTE File: ECC agreements and supporting summary.

ICOs File: ECC agreements and supporting summary.

By November 1, 1996

Ameritech and GTE File: None.

ICOs File: Direct interconnection and EAS agreements, and supporting summaries.

By December 2, 1996

Ameritech and GTE File: None.

ICOs File: SS7 agreements and supporting summary.

By January 2, 1997

Ameritech and GTE File: None.

ICOs File: 911, DA, OS and directory listing agreements, and supporting summaries.

This letter order is issued under the Commission's jurisdiction in ss. 196.02, 196.19, 196.194(1), 196.196, 196.20, 196.219, 196.25, 196.28, 196.37, 196.39, 196.395, 196.40, Stats., other provisions of chs. 196 and 227, Stats., as may be pertinent hereto, and the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252, as applied by the Commission under its discretion and jurisdiction in ch. 196, Stats.

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If you should have any questions on this, please contact Timothy W. Ulrich, Policy Analyst,
of the Telecommunications Division staff at (608) 261-9419.

By the Commission.

Signed this 18th day of July 1996



Lynda L. Dorr
Secretary to the Commission

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cc: Service List 05-TI-140
Records Management, PSCW

See attached Notice of Appeal Rights.

DEFINITIONS OF AGREEMENTS

For the purposes of this letter order, the various agreements between telecommunications providers that must be filed are divided into the following categories:

Direct Interconnection: This category includes agreements for the termination of local calls originated on one provider's network and terminated on that of the other provider that are not included in the EAS or Extended Community Calling (ECC) categories.

EAS: EAS agreements are for the transport and termination of extended area service calls.

ECC: ECC agreements are for the transport and termination of extended community calling calls.

911: This category covers contracts for 911 service between telecommunications providers, plus agreements over the routing of emergency calls and compensation for such emergency calls and associated networks.

DA: This category covers agreements and contracts for directory assistance.

Directory Listings: This category covers agreements for the sharing, sale, or use of directory listings, and for distribution of directories.

OS: This category covers agreements and contracts involving operator services (except for directory assistance). This also includes agreements for providing Traffic Service Position system (TSPS) service to Customer-Owned Coin-Operated Telephones (COCOTs).

SS7: This category includes agreements for providing Signalling System 7 services through the tandem or another remote office, for interconnection to signal transfer points (STPs) and other SS7 equipment and databases, and also includes agreements for 800 number translation and WATS serving offices.

Cellular: This category covers agreements with cellular, paging or RCC providers.

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in s. 227.53, Stats. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in s. 227.01(3), Stats., a person aggrieved by the order has the further right to file one petition for rehearing as provided in s. 227.49, Stats. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with s. 227.48(2), Stats., and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 4/22/91