97-166

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 Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)	Case No. TO-97-40
Petition of MCI Telecommunications Corporation and its Affiliates, Including MCImetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with Southwestern Bell Telephone Company.	)	Case No. TO-96-67

MCI TELECOMMUNICATIONS CORPORATION'S APPLICATION FOR CLARIFICATION

COMES NOW MCI Telecommunications Corporation (MCI) and for its Application for Clarification states to the Commission:

1. Unlike its Report and Order in the AT&T/GTE arbitration (Case No. TO-97-63), in its Report and Order in this case the Commission did not set a deadline for the parties to complete negotiations and submit the resulting contract to the Commission. As argued under Issue 42 in this case, MCI believes such a deadline is essential to the creation of the possibility of resolution of the remaining issues. MCI also remains concerned that such negotiations will not resolve all issues - for example, in the Texas arbitration substantial post-decision negotiations between SWBT and MCI left a number of unresolved issues. Nonetheless, MCI suggests the Commission follow its decision in the AT&T/GTE arbitration and set a deadline for submission of a MCI/SWBT contract for Commission review. MCI recommends a deadline of February 28, 1997.

FILED
DEC 20 1996
MISSOURI
PUBLIC SERVICE COMMISSION

2. MCI also requests the Commission to clarify its plans for conducting a review of cost studies and setting permanent rates. Even a tentative schedule would be helpful to the parties, both in conducting negotiations of remaining issues (including length of term) and in planning resources to devote to such a cost/price proceeding.

3. Finally, MCI seeks clarification that the cost studies to be submitted by SWBT on or before January 25, 1997, regarding sub-loop elements, NID interconnection, route index INP solutions, and BLV/EI, must be served on MCI, AT&T, and OPC, and that such parties will have a reasonable opportunity to file comments thereon within a period of 20 days.

WHEREFORE, MCI Telecommunications Corporation hereby prays that the Commission issue an order granting its application for clarification.

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 CORP.

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

Certificate of Service

A true and correct copy of the foregoing was mailed this 20 day of December, 1996, by placing same in the U.S. Mail, postage paid to the persons listed on the attached list.

Paul G. Lane
Diana J. Harter
Leo Bub
Southwesern Bell Telephone Co.
100 N. Tucker Blvd., Room 630
St. Louis, MO 63101

Paul DeFord
Lathrop & Gage
2345 Grand Blvd.
Kansas City, Missouri 64108-2684

Michael F. Dandino
Senior Public Counsel
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

J

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

CARL J. LUMLEY

January 21, 1997

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-97-40, et al.

Dear Mr. Wright:

Enclosed for filing in the above-referenced matter please find an original and fifteen (15) copies of MCI Telecommunications Corporation and its Affiliates including MCImetro Access Transmission Services, Inc., Supplement to Application for Clarification. Please file stamp the extra copy and return to the undersigned. If you have any questions, please contact us. Thank you.

Very truly yours,

Carl J. Lumley

CJL:dn
Enclosures
cc. SWBT
Public Counsel
AT&T

P.S. We are submitting a copy of this motion by fax today and you should receive the original document and copies tomorrow by Federal Express delivery. Please note this pleading concerns matters on tomorrow's agenda.

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 Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)	Case No. TO-97-40
Petition of MCI Telecommunications Corporation and its Affiliates, Including MCImetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with Southwestern Bell Telephone Company.	)	Case No. TO-96-67

SUPPLEMENT TO APPLICATION FOR CLARIFICATION OF MCI TELECOMMUNICATIONS CORPORATION AND ITS AFFILIATES INCLUDING MCImetro ACCESS TRANSMISSION SERVICES, INC.

COME NOW MCI Telecommunications Corporation and its Affiliates including MCImetro Access Transmission Services, Inc. (MCI) and supplement their Application for Clarification:

1. In the Application for Clarification, MCI asked the Commission to set a deadline of February 28, 1997, for completion of negotiations between Southwestern Bell Telephone Company (SWBT) and MCI and submission of the resulting interconnection agreement.

2. MCI now asks the Commission to make March 14, 1997, the deadline.

3. Since the Commission issued its Arbitration Order on December 11, 1996, MCI has been working diligently and continuously on a revised interconnection agreement. The document is based on the results of extensive negotiations between SWBT and MCI regarding interconnection in Texas and conformed to meet this Commission's Arbitration Order and Missouri facts and law.

4. MCI submitted the revised interconnection agreement to SWBT on January 16, 1997.

5. MCI has asked SWBT to meet on a daily basis on business days from January 21 to January 31 to discuss the agreement, with specific sections scheduled for each day.

6. As documented by the attached correspondence between MCI and SWBT, SWBT refuses to meet with MCI on such terms. Specifically:

a. SWBT refuses to consider the Missouri-modified Texas document notwithstanding the extensive time already devoted by MCI and SWBT to the document;

b. SWBT refuses to start meetings on January 21, and will not even discuss a schedule until January 27;

c. SWBT refuses to meet on a daily basis to complete negotiations;

d. SWBT refuses to schedule specific topics for discussion on specific days.

7. Because of SWBT's refusal to promptly commence meaningful and productive discussions and because of its continuing insistence on starting from scratch rather than building upon the substantial headway made between the companies in Texas, MCI no longer believes negotiations and documentation can be completed in Missouri by February 28. As demonstrated by SWBT's dilatory tactics, however, a deadline remains essential. Consequently, MCI now requests the Commission to clarify its Arbitration Order by setting a deadline of March 14, 1997, for completion of negotiations and submission of an interconnection agreement.

WHEREFORE, in supplement of its Application for Clarification, MCI requests the Commission to set a deadline of March 14, 1997, for MCI and SWBT to complete negotiations and submit an interconnection agreement to the Commission for approval under Section 252 of the Act.

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 CORP.

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

Certificate of Service

A true and correct copy of the foregoing was sent by fax this 21 day of January, 19 97, to the parties on the attached list.

Paul G. Lane
Diana J. Harter
Leo Bub
Southwesern Bell Telephone Co.
100 N. Tucker Blvd., Room 630
St. Louis, MO 63101

Paul DeFord
Lathrop & Gage
2345 Grand Blvd.
Kansas City, Missouri 64108-2684

Michael F. Dandino
Senior Public Counsel
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Date: Mon Jan 20, 1997 4:27 pm EST **PRIORITY **RECEIPT
From: Chip Pitcher / MCI ID: 222-4273

TO: Bill McDonough / MCI ID: 599-5352
TO: Oxler, Dick
EMS: INTERNET / MCI ID: 376-5414
MBX: JO2028@STMAIL8.sbc.com
TO: Frith, Jack
EMS: INTERNET / MCI ID: 376-5414
MBX: JF9624@dlsmail1.sbc.com
CC: Chip Pitcher / MCI ID: 222-4273
CC: Donald T. Lynch / MCI ID: 160-7150
CC: Don Price
EMS: INTERNET / MCI ID: 376-5414
MBX: Don.Price@mci.com
CC: Neal Larsen / MCI ID: 104-6791
CC: * Carl Lumley / MCI ID: 505-3023
CC: Mary DeLuca / MCI ID: 215-2781
CC: Stephen F. Morris / MCI ID: 212-0297
CC: Sally McMahon / MCI ID: 197-1301
CC: Chet Kudtarkar / MCI ID: 343-1694
CC: Robert H. Chozick / MCI ID: 414-6805
CC: Dale Tucker / MCI ID: 206-2092
CC: Donald F. Evans / MCI ID: 109-0475
CC: Alfred Herrera / MCI ID: 493-2637
CC: Gene Rudloff / MCI ID: 554-3072
CC: Jane Ryberg / MCI ID: 340-4465
CC: Les Tettenhorst / MCI ID: 269-5941
CC: Michael A. Beach / MCI ID: 397-3675
CC: Michael Schwarzwalder / MCI ID: 454-7877
CC: Terry Farmer / MCI ID: 113-4928
Subject: MCIm-Southwestern Bell Telephone Negotiations for Missouri
Message-Id: 85970120212758/0002224273PK2EM

Mr. James R Oxler
Southwestern Bell Telephone
One Bell Center
St. Louis, Missouri

20 January, 1997

Dear Dick,

I have received your January 14 letter, rejecting MCIm's request to initiate the MCIm - Southwestern Bell Telephone (SWBT) 251 Negotiations for Missouri on January 21.

As we discussed on Friday, January 17, I am disappointed in SWBT's refusal to even discuss setting the date for the initiation of negotiations until a conference call during the week of January 27th. However, in order to facilitate and expedite the process, as well as make the most efficient use of our time before filing our interconnection agreement, I have arranged a conference call bridge for:

Monday
January 27
3:00 - 4:00 p.m. EST
Number: (800) 369-1608
PIN: 3609

The purpose of the call will be to accomplish the following:

1) Develop a schedule for the negotiation of the MCIm-SWBT Interconnection Agreement for Missouri, and
2) Establish the document to be used as the base document for our negotiations.

Also, I sent the MCIm-SWBT Missouri Interconnection Agreement, (the Agreement), to you and Mr. Jack Frith on January 16. The Agreement was developed based on the MCIm - SWBT Interconnection Agreement we negotiated for Texas (Submitted to the Texas Public Service Commission on December 30, 1996). It is MCIm's position that the most efficient and only sensible approach to the conduct of the Missouri negotiations is to use the January 16 document we have already forwarded to you. More specifically:

.MCIm, as a Petitioner for Local Service in the State of Missouri, is required to submit its Interconnection Agreement that has been negotiated with SWBT,

.The Agreement sent to you on January 16, is based on the MCIm-SWBT Texas Interconnection Agreement we just finished negotiating,

.The MCIm-SWBT Texas Agreement has been updated with the decisions of the Missouri Public Utility Commission ordered at the completion of the Missouri Arbitration,

.MCIm and SWBT are intimately familiar with and have already discussed every section of the Agreement,

.Although SWBT stated that it will require a separate Agreement for each of the states in SWBT's operating Territory, many of the issues already negotiated are applicable through out the SWBT region,

.The same negotiation Teams that negotiated the Texas Agreement will be negotiating the Missouri Agreement, and are therefore very familiar with the areas in agreement, as well as those that may require additional discussion, therefore reducing the amount of time required to negotiate and finalize the entire Agreement,

.In addition, the MCIm and SWBT negotiation teams and subject matter experts are familiar with the structure of the MCIm-SWBT Missouri Agreement.

Your insistence to begin, from scratch and at this delayed date, with some agreement you have negotiated with some other party, is not productive and amounts to what could be characterized as merely a delaying tactic. As you know, the document we proposed on January 16th reflects MCIm's consideration, and in many instances, acceptance, of language proposed by SWBT in earlier negotiations.

Consequently, you leave us with no other option other than to suggest that MCIm and SWBT start our negotiations for Missouri on February 10 (a date on which we had originally thought we could have negotiations virtually completed). I believe MCIm and SWBT could certainly complete our negotiations by February 21 , as SWBT will have had three (3) weeks to review the MCIm-SWBT Missouri Agreement, and identify the areas of the Agreement that may require additional discussion.

I look forward to speaking with you on January 27th, and establishing the negotiation schedule for the MCIm - SWBT Missouri Interconnection Agreement. Please call me if you have any questions.

Sincerely,

Chip

William M Pitcher
(703) 918-6899

Date: Tue Jan 14, 1997 3:58 pm EST
From: Chip Pitcher / MCI ID: 222-4273

TO: Stephen F. Morris / MCI ID: 212-0297
TO: Donald F. Evans / MCI ID: 109-0475
TO: * Carl Lumley / MCI ID: 505-3023
TO: Mary DeLuca / MCI ID: 215-2781
CC: Chet Kudtarkar / MCI ID: 343-1694
CC: James A. Matsey / MCI ID: 389-8608
CC: Robert H. Chozick / MCI ID: 414-6805
CC: Don Price
EMS: INTERNET / MCI ID: 376-5414
MBX: Don.Price@mci.com
CC: Helene Courard / MCI ID: 215-0773
CC: Karen Johnson / MCI ID: 216-2035
CC: M. Lillie Turgut / MCI ID: 215-9457
CC: Neal Larsen / MCI ID: 104-6791
CC: Michael Schwarzwalder / MCI ID: 454-7877
Subject: SWBT - MO Negotiations
Message-Id: 34970114205843/0002224273PK3EM

SWBT has provided a written response to MCIm's request for Missouri Negotiations:

January 14, 1997

Dear Chip,

I am writing to confirm my willingness to meet with MCI by conference call the week of January 27th to continue negotiations of an interconnection agreement in Missouri.

I was surprised by your insistence that we meet the week of the 21st, and particularly by MCI's unilateral offer to the Missouri PSC to file an agreement by February 28th. As you know, Wayne Primm and I worked through the holidays to meet the December 30th deadline with the Texas PUC and our further comments are due January 15th. That review has consumed our available time. We have both scheduled time off with our respective families the week of the 21st, so I suggest that we start the week of the 27th with a conference call to set our agenda for the discussion.

I am pleased MCI now feels it can turn contract sections around within 24 hours of our discussions. I think the weeks and months it took MCI to turn around sections contributed to the time-consuming repetition of items we discussed in Texas.

You have suggested that the document we start with be very similar to the draft contract MCI filed in Texas. Our review of that document is on-going, but to date we have found so many areas of disagreement, it doesn't appear to be a suitable approach. More than likely it will slow things down. I suggest that it would facilitate the process if MCI would consider starting from one of the other approved agreements SWBT has already entered. Then we might have a realistic chance of a timely agreement. Please advise when you think a conference call can be established.

James Oxler

ack:yes
To: Dick Oxler
To: Bill McDonough-SWBT
To: Jack
cc: Schwarzwalder
cc: Chozick
cc: Chip Pitcher
cc: Don Evans
cc: Gene Rudloff
cc: Mary deLuca
cc: Michael Beach
cc: Neal Larsen
cc: Steve Morris
cc: Terry Farmer
Subject: 251/252 Negotiations: Missouri
Mr. Dick Oxler
Southwestern Bell Telephone Company
Carrier Marketing - Billing and Collections
Inter-Industry Marketing and Sales
One Bell Center
Room 7-D-2
St. Louis, Missouri 63101

Dear Dick,

As we discussed on Friday, January 10 (17:55 EST), Southwestern Bell Telephone (SWBT) is not prepared to meet with MCIm to negotiate a 251 Interconnection Agreement for Missouri until January 27.

We addressed the following issues:

1) The SWBT resources assigned to the negotiation of the MCIm-SWBT Missouri Interconnection Agreement are preparing reply comments to MCIm's Filing of the MCIM-SWBT Texas Interconnection Agreement.
2) You, and the SWBT attorney assigned to the MCIm-SWBT Missouri Negotiations are both on vacation until January 27.

3) SWBT will not agree to use the MCIm Missouri Interconnection Agreement as the base document for our negotiations.
4) SWBT will not agree to a negotiation schedule based on specific Sections of the MCIm Missouri Interconnection Agreement,
5) SWBT would be willing to conduct a conference call on January 21, to discuss how MCIm and SWBT will proceed in the negotiation of the MCIm-SWBT Interconnection Agreement for Missouri.

You also stated that you would be sending me a letter addressing the negotiation schedule I sent to Jack Frith on January 8 (see attached), and SWBT's alternative to MCIm's proposal for the Missouri 251 Negotiations.

MCIm will send the MCIm-SWBT Missouri Interconnection to SWBT by January 16.

MCIm is concerned with the time available to negotiate the MCIm-SWBT Interconnection Agreement for Missouri, if the Missouri Public Service Commission requires MCIm to file its Interconnection Agreement on February 28. The January 27 start date SWBT has suggested, leaves MCIm and SWBT twenty-four business days to negotiate, finalize and submit the MCIm - SWBT Missouri Interconnection Agreement to the Missouri Public Service Commission.

In order for MCIm and SWBT to schedule necessary resources and to develop a plan to meet the Missouri Public Service Commission's anticipated filing date of February 28, MCIm requests SWBT's confirmation to initiate the Missouri Negotiations on January 21, (using the MCIm Interconnection Document as the base document), or SWBT's alternative that will allow MCIm and SWBT to effectively negotiate the Missouri Interconnection Agreement within the twenty-four days remaining before the Missouri Public Service Commission's anticipated Filing date.

Please provide your confirmation or proposal by Wednesday, January 15. If you have any questions, or care to discuss this matter, please call me at any time.

Sincerely,

William M Pitcher
(703) 918-6899

Forwarded message:

Date: Wed Jan 08, 1997 12:21 pm EST
From: William M Pitcher / MCI ID: 222-4273

TO: Frith, Jack(EMS)
EMS: INTERNET
MBX: JF9624@dlsmail1.sbc.com
CC: Bill McDonough / MCI ID: 599-5352
CC: Donald F Evans/109-0475
CC: Gene Rudloff / MCI ID: 554-3072

JAN-13-10 MON 03:06 PM

CC: Mary DeLuca/215-2781
CC: Michael A Beach/397-3675
CC: Neal Larsen/104-6791
CC: Stephen F. Morris / MCI ID: 212-0297
CC: Terry Farmer/113-4928
Subject: 251/252 Negotiations: Missouri
Message-Id: 02970108172320/0002224273PK2EM

Mr. Jack Frith
Southwestern Bell Telephone Company
1 Bell Plaza
Room 0522
Dallas, Texas 75202

(Please forward to Mr. Dick Oxler / SWBT / St. Louis, MO)

January 8, 1997

Dear Jack,

I spoke with Dick Oxler on December 31, 1996, to inform Southwestern Bell Telephone of MCIm's request for clarification submitted to the Missouri Public Utility Commission regarding a filing date for the MCIm - Southwestern Bell Telephone Interconnection Agreement. MCIm suggested February 28, 1997 as a filing date. I also suggested the following plan for the MCIm - Southwestern Bell Telephone Missouri Negotiations:

1. Use the MCIm Agreement as the base Negotiation Document because both Southwestern Bell Telephone and MCIm have completely reviewed this document and it would be the most efficient and useful means to develop an agreement that would be conformed to the Arbitration Issues as decided by the Missouri Public Service Commission Arbitration Award issued December 11, 1996.

2. MCIm to provide MCIm Missouri Agreement to Southwestern Bell on January 16, 1997.

3. Conduct Negotiation Sessions January 21 through January 31. Negotiations to be held in St. Louis, Missouri, at the Southwestern Bell Telephone Center.

4. MCIm and Southwestern Bell Telephone Missouri Negotiations to be scheduled on a Attachment-by-Attachment basis; similar to the Negotiation process MCIm and Southwestern Bell Telephone used in the Texas Negotiations: e.g., Attachment VIII on January 21, Attachment III on January 22, Attachment II on January 24. The Attachments that require more discussion than others would be scheduled for the initial part of the Negotiations. Attachments that require less discussion would be scheduled two per day, or for separate team negotiation. I suggested this approach based on the fact that MCIm and Southwestern Bell Telephone just recently completed the negotiations for the MCIm - Southwestern Bell Telephone Interconnection Agreement in Texas, and both Parties would be familiar with agree to terms and conditions, and those issues that may require additional discussion for Missouri.

5. MCIm would establish a Negotiation Administration Center to update

each Attachment of the Agreement as negotiated, and present the revised Attachments to MCIm and Southwestern Bell Telephone the next day for review and approval.

Dick Oxler responded on January 3, stating that:

1. Southwestern Bell Telephone would not be able to meet with MCIm until January 27. The suggested January 21 date was not possible due to resource constraints. Southwestern Bell Telephone resources were focused on responding to the MCIm Interconnection Filing in Texas, and resources were on scheduled vacation.

2. Southwestern Bell Telephone would not agree to use the MCIm Interconnection Agreement as the base document for negotiations in Missouri.

3. Southwestern Bell Telephone was not willing to meet with MCIm for weeks at a time to negotiate the interconnection agreement.

4. Southwestern Bell Telephone would not accept an agenda from MCIm that scheduled specific Attachments to be negotiated on a specific day.

I told Dick that I did not agree with starting the Missouri Negotiations on January 27th, and that at minimum MCIm and Southwestern Bell Telephone should meet for one or two days on January 21 to at least establish a plan for the Missouri Negotiations and to review the Missouri Arbitration Award. Dick suggested a conference call to accomplish the same, and I told Dick I would get back to him regarding the January 27th as the start date of our Missouri Negotiations.

MCIm believes January 27th is too late to initiate our negotiations. Although many of the issues we negotiated for the MCIm-Texas Southwestern Bell Telephone need not require additional discussion for Missouri, some of the issues may require lengthy discussion, and I do not want to be forced to last minute negotiations with out leaving enough time for both Parties to finalize the Agreement and the ability to conduct last minute negotiations if required.

I am requesting that MCIm and Southwestern Bell Telephone initiate our Interconnection Negotiations for Missouri on January 21, and continue our negotiations through January 31 if necessary. If Southwestern Bell Telephone is unable to participate in the schedule I suggested, please provide an alternative plan that will permit both Parties sufficient time to negotiate our Interconnection Agreement for Missouri.

I would like to hear from you by January 9th, in order to schedule the necessary resources accordingly. Please feel free to call me if you have any questions or care to discuss this matter.

Sincerely,

William M Pitcher
(703) 918-6899

K

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 22nd day of January, 1997.

In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(B) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.	)	Case No. TO-97-40
In the Matter of the Petition of MCI Telecommunications Corporation and Its Affiliates, Including MCImetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with Southwestern Bell Telephone Company.	)	Case No. TO-97-67

ORDER GRANTING CLARIFICATION AND MODIFICATION AND DENYING MOTION TO IDENTIFY AND MOTIONS FOR REHEARING

TABLE OF CONTENTS:

I. Procedural History 2
II. Arbitration Process 3
III. Issues to be Modified 5
A. Issue 10. Physical Interconnection and Collocation;. . . 5
B. Issue 16. Access to Poles, Conduits and Rights-of-Way; . 6
C. Issue 22. Operational Support Systems; 6
D. Issue 23. How Should Network Elements be Priced?;. . . . 7
D(1) Issue 23e. Fill Factors;. 7
D(2) Issue 23f. Bad Debt Expense;. 7
E. Issue 36. Pricing Resale Services; and 7
F. Issue 37. Local Service Customer Change Charge 8
IV. Schedule for Development of Permanent Rates. 8
V. Ordered Paragraphs. 11

I. Procedural History

On December 11, 1996, the Commission issued its Arbitration Order in this case. On December 20, 1996, MCI Telecommunications Corporation (MCI) filed an Application for Clarification. On December 20 Southwestern Bell Telephone Company (SWBT) also filed a Motion for Clarification, Modification and Rehearing of Arbitration Order (the Motion), as well as a Motion to Identify and Produce Information. On December 30 AT&T Communications of the Southwest, Inc. (AT&T) joined MCI in its Response to SWBT's Motion and this joint response also requested clarification, modification and rehearing.

On January 6, 1997, SWBT filed its Reply to the Joint Response of MCI and AT&T, and on January 8 MCI and AT&T filed a Joint Motion to Strike the Reply of SWBT (Motion to Strike). On January 14, 1997, SWBT filed its Response to the MCI/AT&T motion to strike.

The Commission has reviewed the pleadings which have been filed in this case since the issuance of the Arbitration Order and will grant in part the motions for clarification and modification as jointly filed by MCI and AT&T and as filed by SWBT. The Commission has modified the discount rate for resale services and determined that a discount rate of 20.32 percent is a more appropriate interim rate. The Commission wishes to reiterate and clarify some of the reasoning underlying its original Arbitration Order. The Commission will establish new deadlines for the submission of rate proposals required by the December 11, 1996 order and will set a schedule for establishing permanent rates for resale of services and for unbundled network elements by June 30, 1997. The Commission will deny the motions for rehearing.

II. Arbitration Process

Certain parties to this arbitration proceeding, which was conducted pursuant to Section 252 of the Federal Telecommunications Act, raised objections which are more appropriate to a judicial or quasi-judicial administrative proceeding. It is important to remember that this is an arbitration proceeding, where the Staff of the Commission was ordered to serve as advisors to the Commission, where intervention was not permitted,[1] and where the Office of the Public Counsel was the only other entity permitted to participate in the case.

Arbitration is generally recognized as a method to resolve disputes, often very complicated ones, through informal means without technical application of the rules of evidence, or the rules of civil or administrative procedure. While fundamental notions of due process must be observed, the body of law developed in the United States, as well as the State of Missouri, is clear that arbitrators have a significant amount of discretion in how the proceeding is conducted, what facts are considered to resolve the dispute, and what the form of resolution will be. **PaineWebber, Inc. v. Agron**, 49 F.3d 347, 350-52 (8th Cir. 1995); **Osceola Co. Rural Water System, Inc. v. Subsurfco, Inc.**, 914 F.2d 1072, 1075 (8th Cir. 1994); **National Ave. Bldg. Co. v. Stewart**, 910 S.W.2d 334, 346, 348-49 (Mo. App. 1995); **Stifel Nicolaus & Co. v. Francis**, 872 S.W.2d 484, 485-86 (Mo. App. 1994).

Indeed, the process of arbitration is so inherently flexible that neither the Telecommunications Act nor even the federal or state

---

[1] Intervention may be permitted at the time the interconnection agreement, whether arrived at through negotiation or arbitration, is presented to the Commission for approval pursuant to Section 252(e) of the Telecommunications Act.

arbitration acts precisely define arbitration. See 47 U.S.C. § 252(b)-(c); 9 U.S.C. §§ 1-16 (federal arbitration act); §§ 435.012-.470, R.S. Mo. (1994). While there are standards in the Act to guide the work of the arbitrators, the absence of comprehensive rules grants a degree of liberality to these proceedings which is consistent with the commercial arbitration practices followed by the American Arbitration Association.

Some have argued that Section 252(b)(4)(B) limits the evidence and information upon which this Commission may base its arbitration decisions. They contend that the second sentence of Section 252(b)(4)(B) provides that a commission "may proceed on the basis of the best information available to it from whatever source derived" only after "any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission." However, this provision must be read in harmony with the first sentence of 252(b)(4)(B) which states that a commission "may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on an unresolved issue [emphasis added]." The permissive nature of this passage recognizes that a State commission "may" consult other sources as well. This Commission believes that in reaching its arbitration decisions it may rely upon evidence presented by the parties, evidence presented to it in other public proceedings, evidence presented to and decisions issued by the Federal Communications Commission and other state Commissions, as well as generally reliable information which is in the public domain.

Such conclusion is compelled by the mandate of Section 252(b)(4)(C) which declares that "the State commission shall resolve each issue set forth in the petition and the response, if any, by imposing

appropriate conditions as required to implement [the requirements of the Act] upon the parties to the [interconnection] agreement...." This provision expresses Congress's clear intent that State commissions ensure that interconnection agreements reflect the requirements of Section 251 of the Act, and set rates and terms accordingly. This shall be done under the Act even in the face of recalcitrant parties that seek to present a State commission with extreme positions based on incomplete, inaccurate or incomprehensible evidence. Congress did not intend to impose upon State commissions a Hobson's choice or "winner-take-all " kind of arbitration, sometimes practiced by professional baseball.

III. Issues to be Modified

Those issues to be clarified or modified are as follows:

A. Issue 10. Physical Interconnection and Collocation;
B. Issue 16. Access to Poles, Conduits and Rights-of-Way;
C. Issue 22. Operational Support Systems;
D. Issue 23. How Should Network Elements be Priced?;
D(1) Issue 23e. Fill Factors;
D(2) Issue 23f. Bad Debt Expense;
E. Issue 36. Pricing Resale Services; and
F. Issue 37. Local Service Customer Change Charge.

A. Issue No. 10. Physical Interconnection and Collocation:

SWBT has argued that in the situation where a local service provider (LSP) interconnects with SWBT at one point in the LATA and requests common transport, provided by SWBT, to any other exchange within the LATA, compensation should be as set out by SWBT's proposal. The Commission finds it appropriate to clarify the Arbitration Order on the issue of access charges which are appropriate when common transport is provided.

To that end, the Commission finds that it is appropriate to allow SWBT to be compensated for calls which are routed over common facilities and inter-tandem switches, with compensation mechanisms