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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 11th  
day of May, 1999.

In the Matter of MCI's Petition for )  
Arbitration of Directory Assistance ) Case No. TO-99-319  
Listings Issues with SWBT. )

ORDER DENYING REHEARING

On January 28, 1999, MCI Telecommunications Corporation (MCIT) and MCImetro Access Transmission Services, Inc. (MCIm, together MCI) filed a petition for arbitration with the Commission pursuant to the Telecommunications Act of 1996 (the Act) and Section 386.230 of the Revised Statutes of Missouri. The petition asks the Commission to arbitrate issues related to the provision of directory assistance listings and databases by Southwestern Bell Telephone Company (SWBT) pursuant to an existing interconnection agreement.

On March 16, the Commission dismissed MCI's petition because it was a request for interpretation and enforcement of an existing contract rather than a petition for arbitration. On March 25, MCI filed an application for rehearing. MCI contends that the Commission should not have dismissed the petition because the Commission has primary and exclusive jurisdiction to settle disputes over which of a utility's rate schedules applies to a particular customer. MCI also alleges that the limitations

on the Commission's power to enforce contracts should not apply to contracts such as the one at issue here. The Commission is not convinced by either of these arguments, and finds that MCI has not given sufficient reason to grant a rehearing.

Because MCI's application, on its face, requested that the Commission interpret its contract before the Commission considered it a request for arbitration, the Commission did not reach all of the points raised in SWBT's motion to dismiss. Although the Commission believes that the reasons given in its March 16 order were valid, it did not discuss other grounds on which the petition might have been dismissed. The Commission will deny rehearing, but will reconsider and amend its March 16 order for the limited purpose of articulating the other, equally valid, reasons why MCI's petition for arbitration must be dismissed.

In its February 22, 1999, answer to MCI's petition, SWBT moved to dismiss the petition because, *inter alia*, MCI did not request negotiations under the Act. SWBT acknowledges that it received a letter from MCIT on or about August 21, 1998, but states that it did not consider that letter as a request for negotiations. SWBT argues that it negotiated with MCI for the provision of directory listings as it would with any interexchange carrier or provider of operator services.

The letter MCIT sent to SWBT is attached to its petition. After discussing an Arbitration Award of the Public Utility Commission of Texas, the letter states:

Additionally, MCI proposes that the parties meet to discuss MCI's access to SWBT's directory assistance listings in Kansas, Oklahoma, Missouri, and Arkansas. It is MCI's expectation that the parties should be able to resolve any remaining directory assistance issues in these other states through negotiation and without commission involvement.<sup>1</sup>

It is clear that the letter primarily dealt with the recent Texas arbitration order, and asked SWBT to suggest dates it was available to begin discussions of the technical aspects of complying with that order. Access to SWBT's directory assistance listings in Kansas, Oklahoma, Missouri, and Arkansas was simply an additional topic to be discussed on another date.

The letter does not state that it is a request for negotiations pursuant to the Act; in fact, it does not mention the Act. Section 252(b)(1) of the Act states that:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State Commission to arbitrate any open issues.

In order for a party to be able to petition a state commission to arbitrate a dispute, it must have requested negotiation under Section 252(b)(1) of the Act. Nothing in the letter MCIT sent on August 21, 1998 would allow SWBT to recognize it as a request for negotiation under the Act. In its February 22, 1999 answer to MCI's petition, SWBT correctly states that the letter did not request negotiations pursuant to the Act. SWBT adds that it did

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<sup>1</sup> Although the letter was part of a 21-page exhibit that was designated "Proprietary," the Commission determines that this passage from the letter is not proprietary.

not treat the letter as such a request and does not consider the discussions it had to be negotiations pursuant to the Act.

The letter was sent by MCIT on MCIT letterhead and does not mention MCIm. MCI's argument that later communications between MCI and SWBT imply that MCIm was involved in the negotiations is unconvincing. Furthermore, this argument undermines MCI's contention that negotiations pursuant to the Act were requested by the August 12, 1999 letter. If the parties involved in the negotiation were not even established by that letter, but were established through later communications, then the letter cannot be the "trigger" required by Section 252 of the Act.

The Commission has considered MCI's petition, SWBT's answer, and the other pleadings, and determines that, for the reasons discussed in its March 16, 1999 Order Dismissing Petition, as well as the reasons discussed herein, the petition for arbitration should be dismissed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Rehearing filed by MCI Telecommunications Corporation and MCIMetro Access Transmission Services, LLC, f/k/a MCIMetro Access Transmission Services, Inc. is denied.

2. That the Petition of MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. for Arbitration of Directory Assistance Listings Issues is dismissed

for the reasons set forth herein and the reasons set forth in the Commission's March 16, 1999, Order Dismissing Petition.

3. That this order shall become effective on May 21, 1999.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Lumpe, Ch., Crumpton, Murray,  
Schemenauer, and Drainer, CC., concur

Lewis Mills, Deputy Chief Regulatory Law Judge

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