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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 16th
day of March, 1999.

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

ORDER DISMISSING PETITION

On January 28, 1999, MCI Telecommunications Corporation (MCIT) and MCIMetro Access Transmission Services, Inc. (MCIM, collectively 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. MCI states in its petition that it believes that enforcement of the existing agreement will provide the relief it seeks.

On February 22, SWBT filed an answer to MCI's petition in which it, *inter alia*, moves to dismiss the petition because 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 services¹. SWBT argues that MCI is attempting to renegotiate a service or element fully agreed upon in their existing contract through the mechanism of a petition for arbitration.

On March 4, MCI replied to SWBT's answer and motion to dismiss. MCI states that SWBT has refused to provide the requested access as provided for in the interconnection agreement. MCI argues that it is not attempting to renegotiate the existing agreement, but rather to enforce it.

Unfortunately for MCI, a petition for arbitration before a state commission is not the proper way to enforce a contract. The provisions of the Act that allow a negotiating party to petition the Commission for arbitration are designed to facilitate new agreements concerning interconnection, services, or network elements, not to enforce compliance with existing contracts.

It is well settled law that this Commission has no authority to adjudicate contract disputes. As the Southern District Court of Appeals stated in Gaines v. Gibbs, 709 S.W.2d 541, (Mo. App. S.D. 1986):

The Public Service Commission is not a court, [State ex rel. Wash. Univ. v. Public Service Commission, 308 Mo. 328, 272 S.W. 971, 972 (1925); State ex rel. Kansas City v. Public Service Commission, 360 Mo. 339, 228 S.W.2d 738, 741[1] (1950)], and it has no power to construe or enforce contracts. (at 543).

¹ SWBT also states that the letter, if it is determined to be a request for negotiations, was only a request on behalf of MCIT and not MCIM. Based upon its determination concerning the petition for arbitration, the Commission will not address this question.

MCI asks the Commission to first consider its request as one of contract enforcement, but, if the Commission concludes that the provision of directory assistance listings is not covered in the existing agreement, to consider it a request for new services or network elements. The Commission cannot determine whether or not the existing agreement covers these elements; a court of competent jurisdiction must construe and enforce the contract.

The Commission will not arbitrate this matter as a request to enter into an agreement for the provision of new interconnection, services or network elements when it is possible that a court of competent jurisdiction will conclude that MCI already has a binding contract for what it seeks. The Commission will dismiss the petition for arbitration.

IT IS THEREFORE ORDERED:

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

2. That this order shall become effective on March 26, 1999.

BY THE COMMISSION



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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