

B-
Bo
PB
SD

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 20th
day of November, 1997.

In the Matter of AT&T Communications of the)
Southwest, Inc.'s Petition For Arbitration)
Pursuant to Section 252(b) of the Tele-) CASE NO. TO-97-40
communications Act of 1996 to Establish an)
Interconnection Agreement with Southwestern)
Bell Telephone Company.)

In the Matter of the Petition of MCI)
Telecommunications Corporation and)
Its Affiliates, Including MCImetro)
Access Transmission Services, Inc.,)
for Arbitration and Mediation Under) Case No. TO-97-67
the Federal Telecommunications Act of 1996)
of Unresolved Interconnection Issues with)
Southwestern Bell Telephone Company.)

In the Matter of the Mediation and)
Arbitration of Remaining Interconnection)
Issues Between MCI Telecommunications) Case No. TO-98-200
Corporation and its Affiliates and)
Southwestern Bell Telephone Company.)

ORDER DIRECTING SUBMISSION OF AGREED ISSUES, and
ORDER ESTABLISHING CASE FOR
ACCELERATED MEDIATION AND ARBITRATION

Efforts to arrive at an interconnection agreement for MCI Telecommunications Corporation and its affiliates (MCI) and Southwestern Bell Telephone Company (SWBT) have consumed the resources of these two companies and the Commission. The Commission found in its Arbitration Order of December 11, 1996, that "The parties have failed to negotiate in good faith." The parties were directed by that order to file an interconnection agreement. Instead, these two parties have filed between 35 and 40 additional motions setting out reasons why they cannot comply

with the Arbitration Order. Little progress has been made. Meanwhile, Missouri's telecommunications customers are waiting.

The Commission's goal is not to fix the blame but to fix the problem. The Commission will implement a similar process for MCI and SWBT as the one it used for SWBT and AT&T in Case No. TO-98-115.

On November 3, 1997, MCI filed its Reply to SWBT's Second Motion to Strike and, therein, requested a process similar to the one currently being used in Case No. TO-98-115. The Commission finds that procedure alone will not resolve the remaining issues and that two separate procedures will be necessary to move MCI and SWBT toward interconnection. Within Case No. TO-97-67 the Commission has ordered MCI and SWBT to file an interconnection agreement and that has not been done. MCI and SWBT will be directed to complete and file a signed interconnection agreement which contains each of the issues for which the parties are able to arrive at acceptable/agreeable language. For each issue addressed in Case No. TO-97-67, but for which the parties cannot agree to contractual language, the parties shall file a table or matrix which identifies the issue, the preferred language by MCI, and the preferred language by SWBT. The Commission will then review the language and order implementation of that language which most accurately reflects the intent of the Commission's order.

In order to facilitate the resolution of any remaining issues, the Commission will grant MCI's request for implementation of the process similar to the one which was ordered for Case No. TO-98-115. In its November 10 pleading entitled "Southwestern Bell Telephone Company's Response to MCI's Reply to Southwestern Bell Telephone Company's Second Motion to Strike" SWBT has asserted that MCI has not formally filed for additional arbitration and that such a procedure would, therefore, be

improper. The Commission finds this argument to be form over substance. The Commission's goal is to finally resolve the issues remaining between these two parties and in the interest of judicial efficiency the process to resolve these issues will necessitate docketing a second case.

The Commission will not grant any motions for further arbitration of matters concerning interconnection between MCI and SWBT prior to expiration of the term of the agreement implementing the Commission's final order in Case No. TO-97-67. The Commission will establish an expedited procedural schedule to ensure that arbitration of the remaining issues is completed as soon as possible. The following conditions shall apply.

A. In order to resolve these questions as quickly as possible the Commission will direct the parties to meet and narrow the issues. The parties shall send their technical experts to meet in a technical conference with members of the Commission's Arbitration Advisory Staff December 1-15. The parties shall prepare for Commission review, no later than December 15, a comprehensive well-defined list of unresolved issues. The Commission will accept only one jointly produced list of issues, to be designated the Joint Issues List. That document shall be filed not later than December 15.

B. The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. In this proceeding, the prefiled testimony, based upon the Joint Issues List, shall set forth specific language proposed by the filing party for resolving the remaining issues in dispute and shall support the filing party's reason for proposing that language. The prefiled testimony shall address each issue in the same order and under the same headings and issue numbers as did the Joint Issues List filed on December 15. The Commission expects the parties to comply with the requirements of 4 CSR 240-2.130, including the filing of testimony on line-

numbered pages. This pre-filed testimony shall be filed not later than December 23.

C. Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. The party that considers the information to be proprietary or highly confidential should request a protective order. Any testimony or schedule filed without a protective order first being established shall be considered information open to the public.

D. The Commission shall designate its General Counsel, Dana K. Joyce, or his designee, to serve as a Special Master in this proceeding. The Special Master and the Arbitration Advisory Staff shall meet with MCI, SWBT and OPC during the period of January 5 through January 15, 1998, for the purpose of assisting the parties in resolving the disputed issues. The parties shall use the meeting with the Special Master to eliminate issues through compromise and through clarification of misunderstandings, explanation of an issue's interrelationship with other issues, and correction of clerical or arithmetical errors.

E. MCI and SWBT shall jointly file a Settlement Document not later than January 22, 1998. This pleading shall identify the issues from the December 15 Joint Issues List that have been resolved as of the date of the Settlement Document and shall set forth the specific language upon which MCI and SWBT have agreed concerning each of the resolved issues. No issue shall be identified as settled if MCI and SWBT have not agreed to specific language. The Settlement Document shall reference the same headings and issue numbers as did the December 15 Joint Issues List.

F. The parties and Special Master shall file a Statement of Remaining Issues, which shall take the form of a single pleading filed

jointly by MCI, SWBT and the Special Master, not later than January 22, 1998. This pleading shall identify, in matrix format, each issue which remains in dispute. The pleading shall address each issue in the same order and under the same headings and issue numbers as did the December 15 Joint Issues List. For each issue, the pleading shall contain the language proposed by MCI, the language proposed by SWBT, and the Special Master's recommendation to adopt either the MCI language or the SWBT language, along with the Special Master's explanation of his position.

G. MCI, SWBT and the Special Master shall ensure that all of the issues in the Joint Issues List filed by MCI and SWBT on December 15 are addressed in either the Settlement Document or Statement of Remaining Issues.

H. MCI and SWBT shall be permitted to file responses to the recommendations of the Special Master not later than January 29, 1998.

I. OPC shall be permitted to file responses to the Statement of Remaining Issues by the date established in this order.

J. Responses to the Statement of Remaining Issues and to the recommendations of the Special Master shall be limited to 30 pages.

K. All pleadings shall be filed in accordance with 4 CSR 240-2.080. All pleadings and testimony shall be filed both in paper form and on 3½" x 5" diskettes in WordPerfect 6.1 format, and shall employ the same headings and numbers to identify the issues that were employed in the Joint Issues List filed on December 15.

L. Following the deadline established in this order for MCI and SWBT to file their Settlement Document, MCI and SWBT shall not be permitted to withdraw issues from the Statement of Remaining Issues by settling them. Rather, all issues not settled as of the deadline for filing of the Settlement Document and the Statement of Remaining Issues shall be resolved

by the Commission as it deems appropriate. The Commission may rely on its own experts in reaching a final arbitration decision.

The Commission will establish Case No. TO-98-200, and within that case MCI and SWBT shall essentially follow the process used in TO-98-115. The Commission will remind MCI and SWBT, as it reminded AT&T and SWBT in Case No TO-98-115, that they are under a federal statutory duty to negotiate in good faith.

IT IS THEREFORE ORDERED:

1. That MCI Telecommunications Corporation, its affiliates and Southwestern Bell Telephone Company shall file with the Commission an interconnection agreement which includes all issues from Case No TO-97-67 to which the parties are able to agree upon contractual language. This agreement shall be filed not later than December 1, 1997.

2. That MCI Telecommunications Corporation, its affiliates and Southwestern Bell Telephone Company shall file a matrix in which issues for which the parties cannot agree to contractual language are set out with alternate choices side by side, so that the Commission may designate that language which most accurately represents the intent of the Commission in Case No TO-97-67. This document shall be filed not later than December 1, 1997.

3. That the Commission will establish Case No. TO-98-200 for the purpose of resolving all remaining issues between these two parties.

4. That the Commission shall designate Dana K. Joyce, General Counsel, or his designee as the Special Master for the purpose of the dispute resolution process in Case No. TO-98-200.

6. That the parties shall meet in a technical conference beginning December 1, 1997, at 9:00 a.m. The Commission's Arbitration Advisory Staff shall facilitate the technical conference, the outcome of which shall be

a single, jointly produced well-defined issues memorandum to be filed no later than Friday, December 15, 1997. The parties shall file the issues memorandum with the Commission and shall include a version on 3.5" computer disk in WordPerfect format.

7. That the Special Master shall arrange a meeting place for the technical conference and shall advise the Adjudication Division and all parties by fax transmission of its location.

8. That the Special Master and the Arbitration Advisory Staff shall meet with the parties during the period of January 5, 1998 through January 15, 1998 for the purpose of assisting the parties in resolving as many of the disputed issues as possible and otherwise complying with the conditions established in this order.

9. That no hearing shall be held in this case.

10. That the Commission will base its arbitration order on the pleadings filed in Case No. TO-98-200 and Case No. TO-97-67, as well as on any technical expertise provided by the Commission's Staff.

11. That the following procedural schedule shall be adopted for the proceeding in TO-98-200, subject to the conditions discussed above:

Joint Issues List filed by MCI and SWBT	- December 15, 1997
Direct testimony to be filed by MCI and SWBT	- December 23, 1997 3:00 p.m.
Settlement document to be filed by MCI and SWBT	- January 22, 1998 3:00 p.m.
Statement of Remaining Issues to be filed jointly by MCI, SWBT and Special Master	- January 22, 1998 3:00 p.m.
Deadline for MCI and SWBT to file responses to recommendations of Special Master	- January 29, 1998 3:00 p.m.
Deadline for OPC to file response to Statement of Remaining Issues	- January 29, 1998 3:00 p.m.

7. That this order shall become effective on November 20, 1997.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton,
Murray, and Drainer,
CC., Concur.

Randles, Regulatory Law Judge