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

ORDER GRANTING REHEARING AND SUSPENDING PROCEDURAL SCHEDULE

On November 20, 1997, the Commission entered its Order Establishing Case for Accelerated Mediation and Arbitration, which established a procedural schedule for MCI Telecommunications Corporation and its affiliates (MCI) and Southwestern Bell Telephone Company (SWBT) to mediate and arbitrate the issues which remain regarding interconnection between them. This case was established for the purpose of bifurcating the issues not previously arbitrated from those which were arbitrated in Case No. TO-97-67.

SWBT applied for rehearing of the Commission's order on November 26. In its application for a rehearing, SWBT alleged that MCI had never made a formal request to negotiate the issues which are the subject of this case pursuant to the federal Telecommunications Act of 1996 (the Act), 47 U.S.C. §151 *et seq.* SWBT further alleged that, even if the Act does not require that a formal request for negotiation be made, negotiations in fact began on January 16, 1997. SWBT attached an affidavit of James R. Oxler, SWBT's lead negotiator on interconnection issues with MCI in Missouri, which supported the January 16 date. SWBT further alleged

that no formal petition requesting the Commission to arbitrate these issues was filed pursuant to Section 252(b) of the Act. SWBT alleged that the time frame for filing such a petition has passed, because more than 160 days have elapsed since January 16.

MCI filed its reply to SWBT's application for rehearing on December 5. MCI alleged that MCI hand-delivered to SWBT representatives a proposed interconnection agreement on June 3, and that this submittal constituted a request for negotiation under the Act. MCI did not submit an affidavit with details concerning the persons involved in, or the location of, the alleged submittal. MCI further alleged that, while it did not submit a document denominated as a "petition," it did make a request to the Commission to arbitrate these issues on November 3, which was 153 days after MCI allegedly requested SWBT to negotiate by submitting the proposed agreement to SWBT. Alternatively, MCI stated that if the Commission were to find that the request for negotiation was made on January 16, as alleged by SWBT, then the Commission would have jurisdiction because MCI filed a proposed interconnection agreement with the Commission on June 16, which was 151 days after January 16.

SWBT filed its response to MCI's reply on December 8. In that response, SWBT disputed MCI's contention that the agreement proposed on June 3 constituted a request for negotiation. According to SWBT, the June 3 draft interconnection agreement was MCI's attempt to implement the Commission's December 11, 1996, initial Arbitration Order. SWBT pointed out that a draft agreement was subsequently filed with the Commission by MCI on June 16, and that when MCI made its June 16 filing, MCI claimed that the proposed agreement would implement the Commission's initial Arbitration Order of December 11, 1996. SWBT points to the preemption petition that

MCI filed with the Federal Communications Commission (FCC) as further support for its argument that MCI was contending that the agreement had been offered to implement the December 11, 1996, Arbitration Order.

The Act sets forth certain procedures for negotiation, arbitration, and approval of interconnection agreements:

(b) AGREEMENTS ARRIVED AT THROUGH COMPULSORY ARBITRATION—

(1) ARBITRATION— 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.

(2) DUTY OF PETITIONER—

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) OPPORTUNITY TO RESPOND— A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) ACTION BY STATE COMMISSION—

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State 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 the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) 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 subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

See § 252(b) of the Act. The pleadings filed by MCI and SWBT create a factual issue concerning whether a request for negotiation was ever made, whether a petition for arbitration was ever filed, and whether any such petition was filed during the period from the 135th to the 160th day (inclusive) after the date on which SWBT received the request for negotiation.

The Commission has reviewed the pleadings in this case and in Case No. TO-97-67, and determined that MCI has the burden to establish that the Commission has jurisdiction and it has not met that burden. However, MCI has made a colorable claim that the Commission has jurisdiction. The Commission concludes that a hearing should be held to determine whether the Commission has jurisdiction to arbitrate the issues that are the subject of this case, and that the procedural schedule established on November 20, 1997, should be suspended pending the outcome of the hearing.

At the hearing the parties will be expected to answer the following questions pertaining to the Commission's jurisdiction, as well as any other questions relevant to jurisdiction:

- 1) Does the federal Act require a competitive local exchange carrier to make a formal request for negotiation and, if not, what standard should the Commission use in determining whether a "request for negotiation" has been made under the Act?
- 2) Must a party file a pleading denominated a "petition" in order to initiate an arbitration case pursuant to Section 252(b) of the Act?
- 3) What, at a minimum, must a pleading contain to qualify as a "petition" filed pursuant to Section 252(b) of the Act?
- 4) On what date or dates did MCI submit a request to negotiate to SWBT that encompassed the issues involved in Case No. TO-98-200?
- 5) What evidence supports the answer to question 4?
- 6) What evidence contradicts the answer to question 4?
- 7) What dates constituted the 135th to 160th days following MCI's submittal of a request for negotiation to SWBT?
- 8) On what date or dates did MCI submit to the Commission a petition to arbitrate the issues involved in Case No. TO-98-200?
- 9) What pleading or set of pleadings constitutes the petition for arbitration made to the Commission by MCI?
- 10) If the Commission finds that it has jurisdiction, has SWBT filed a response to the petition and, if not, could the Commission treat the Joint Issues List, Direct Testimony and Statement of Remaining Issues to be filed under the Commission's November 20 procedural schedule as SWBT's response under Section 252(b) of the Act?

The parties shall produce witnesses at the hearing who are competent to answer the above questions to extent such questions are factual in nature.

Although the Commission will not require the parties to continue with the discussions that were mandated under its November 20 order while the procedural schedule is suspended, the Commission encourages the parties to voluntarily continue to negotiate in good faith and eliminate as many disagreements as possible. The Commission's Arbitration Advisory Staff shall remain available to facilitate any such discussions and the Commission encourages the parties to continue using the Commission's facilities, as well.

IT IS THEREFORE ORDERED:

1. That the procedural schedule adopted for the proceeding in Case No. TO-98-200 is suspended indefinitely.

2. That the application for rehearing filed by Southwestern Bell Telephone Company on November 26, 1997, is granted.

3. That an evidentiary hearing will be held at 9:00 a.m. on December 30, 1997, in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

4. That anyone wishing to attend the hearing who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline — 1-800-392-4211, or TDD Hotline — 1-800-829-7541.

5. That the parties shall produce a witness or witnesses with knowledge concerning the questions set forth above at the hearing.

6. That each party shall file its proposed order of witness presentation by December 23, 1997.

7. That this order shall become effective on December 11, 1997.

BY THE COMMISSION



(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

Randles, Regulatory Law Judge