

Decision No. C97-572

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 96A-366T

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IN THE MATTER OF THE PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, INC., FOR ARBITRATION PURSUANT TO 47 U.S.C. § 252(B) OF THE TELECOMMUNICATIONS ACT OF 1996 TO ESTABLISH AN INTERCONNECTION AGREEMENT WITH U S WEST COMMUNICATIONS, INC.

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DOCKET NO. 96A-345T

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IN THE MATTER OF THE INTERCONNECTION CONTRACT NEGOTIATIONS BETWEEN AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND U S WEST COMMUNICATIONS, INC., PURSUANT TO 47 U.S.C. § 252.

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**DECISION APPROVING TERMS  
FOR INTERCONNECTION AGREEMENT**

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Mailed Date: June 12, 1997  
Adopted Date: May 22, 1997

**I. BY THE COMMISSION**

**A. Statement**

1. On March 7, 1997, in Docket No. 96A-366T, MCImetro Access Transmission Services, Inc. ("MCIm"), and U S WEST Communications, Inc. ("USWC"), each filed Applications requesting that the Commission approve separately proposed interconnection agreements. On that same date, in Docket No. 96A-345T, AT&T Communications of the Mountain States, Inc. ("AT&T"), and USWC also filed separate Applications requesting

approval of different proposed interconnection agreements for  
those two

parties. All Applications filed on March 7, 1997 were intended to comply with the directives issued by the Commission in Decision No. C96-1337 and No. C97-140 (Docket No. 96A-366T) and Decision No. C96-1231 and No. C97-7 (Docket No. 96A-345T). In those decisions, the Commission resolved disputes between MCI and USWC, and between AT&T and USWC in accordance with the requirements set forth in 47 U.S.C. § 252(b) (State commissions to arbitrate disputes between incumbent local exchange carriers and other telecommunications carriers regarding interconnection, unbundled network elements, and resale of telecommunications services).

2. In Decision No. C96-1337 and No. C97-140, we ordered MCI and USWC to submit a complete proposed interconnection agreement consistent with the holdings in the decisions for Commission review and approval pursuant to the provisions of 47 U.S.C. § 252(e) (interconnection agreement adopted by arbitration shall be submitted to State commission for approval). Similarly, in Decision No. C96-1231 and No. C97-7, we ordered AT&T and USWC to submit a proposed interconnection agreement for approval.

3. The separate proposed agreements submitted on March 7, 1997 (*i.e.*, the agreements proposed by USWC as compared to those proposed by MCI and AT&T) differed in significant

respects inasmuch as the parties (USWC and MCIm, and USWC and AT&T), even after issuance of the Commission's arbitration decisions, were unable to reach consensus on the specific terms of an agreement. In Decision No. C97-346 and No. C97-347, we ruled that none of the proposed interconnection agreement constituted proper filings within the meaning of § 252(e). Specifically, we noted that § 252(e) requires that the contracting parties actually agree on the proposal submitted to the Commission for review and approval. Decision No. C97-346 and No. C97-347 informed the parties of our intent to order the precise terms to be included in the interconnection agreements between USWC and MCIm, and USWC and AT&T. We directed the parties to submit additional comments addressing the specific contractual proposals of the other contracting party. Those comments have been filed and considered by the Commission.

4. Now being duly advised in the premises, we order that those provisions set forth in Appendix A to this decision, shall be incorporated in an interconnection agreement between USWC and MCIm and between USWC and AT&T. We find that the attached provisions are consistent with the Telecommunications Act of 1996<sup>1</sup> ("Act") and our prior decisions in this case.

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 70, codified at 47 U.S.C.

## **B. Discussion**

1. Since the proposed interconnection agreement by MCIm--the MCIm agreement is also acceptable to AT&T for its

arbitration<sup>2</sup>--is more comprehensive than that proposed by USWC and for the reasons stated in this decision, we use the proposal by MCI as the starting point for determining the precise provisions which should be included in an interconnection agreement between the contracting parties here. In its comments, USWC generally objects to MCI's proposed agreement on three grounds: (1) the MCI proposal is unnecessarily detailed and complex; (2) MCI and AT&T, in the proposed agreement, are in effect requesting that the Commission arbitrate issues not previously included in the petitions for arbitration; and (3) the record in this case does not contain sufficient evidence to justify adoption of the MCI agreement. In general, we disagree with these arguments.

2. With respect to USWC's first contention, we find that the Commission should direct completion of a comprehensive interconnection agreement. We are persuaded that a detailed agreement is necessary to delineate the parties' expectations

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<sup>2</sup> In the joint comments filed by MCI and AT&T on April 10, 1997, AT&T proposes to adopt the MCI proposal as its own. Since our prior arbitration decisions regarding the AT&T petition for arbitration are consistent with those concerning MCI's petition, we accept the AT&T suggestion. We observe that our present decision to use the MCI proposed agreement, as modified here, with respect to the AT&T proceeding is consistent with our prior decisions on the AT&T petition for arbitration. Appendix A, which is based upon the MCI proposed agreement, refers to MCI as the party contracting with USWC. Obviously, "AT&T" should be substituted for "MCI" in the AT&T agreement to be submitted for Commission approval in Docket No. 96A-345T pursuant to the instant order. For the convenience of the parties, Appendix A indicates by strike-out and \_\_\_\_\_ how the Commission has modified the

with respect to interconnection, unbundling of network elements, and resale of USWC's telecommunications services. A detailed agreement is necessary to provide certainty for future dealings and to minimize future disputes between the parties, and will obviate delay in MCI's and AT&T's competitive entry into the telecommunications markets in the state. As such, a comprehensive agreement promotes the competitive purposes stated in the Act.

3. We also note that USWC, although objecting to an agreement which contains an "unwarranted level of detail and complexity," provides no credible reason for refusing to adopt a comprehensive agreement. This order, as reflected in Appendix A, acknowledges that many of the specific contractual provisions advocated in the MCI proposal are inappropriate. To the extent we have made such determination with respect to specific proposed terms, we are modifying MCI's and AT&T's suggestions. However, the bare assertion that the MCI proposed agreement is unnecessarily thorough provides no basis for rejecting MCI's and AT&T's request that the agreement address issues which the parties now anticipate arising in the future. In light of this conclusion, it is appropriate to use the MCI proposal, as opposed to the less comprehensive proposal by USWC,

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MCI proposed agreement. The signed agreements submitted by the parties for Commission approval should not contain this formatting.

as the starting point for determining the precise provisions that should be included in an interconnection agreement. As noted, to the extent specific contractual suggestions in the MCIm proposed agreement are determined to be improper, we have modified those suggestions in Appendix A.

4. As for USWC's contention that MCIm and AT&T, in their proposed agreements, are in effect requesting that the Commission arbitrate issues not previously included in the petitions for arbitration, we find that the provisions approved in Appendix A are within the scope of this proceeding. MCIm, in its March 7, 1997 comments, points out that the issues identified in its original petition for arbitration were expansive. For example, the petition stated that the issues for resolution by arbitration fell into a number of categories including inter-connection, unbundling, resale, business processes, collocation, rights-of-way, ancillary services, numbering issues, and access. The petition included certain exhibits (e.g., Exhibits D and E) which identified unresolved issues in greater detail. Further, the petition stated that since no agreement had been reached with USWC, "All issues subject to arbitration under sections 251 and 252 of the Federal Act are unresolved, therefore, and submitted to the Commission for arbitration. . . ." MCIm Petition for Arbitration, at 6.



5. Similarly, the AT&T petition for arbitration was comprehensive in scope. The petition itself not only identified broad categories of issues for arbitration (e.g., physical interconnection; collocation; reciprocal compensation; resale; unbundling; electronic interfaces; access to other essential local services and facilities such as White Pages listings, directory assistance, branding; etc.), but discussed AT&T's specific positions with respect to these issues. Moreover, AT&T submitted a detailed proposed interconnection agreement with its original petition. In the arbitration hearings, AT&T expressly requested that the Commission approve its proposed interconnection contract.

6. For purposes of determining the scope of this proceeding, we interpret the petitions, which were in fact comprehensive, broadly. Such an interpretation is consistent with the purpose of the Act to promote competition in the telecommunications industry, in part, through arbitration proceedings conducted by state commissions.

7. We also observe that the parties to this case, including USWC, had the opportunity to submit extensive testimony and exhibits regarding their positions in this case. As noted, the initial petitions for arbitration gave explicit notice that the issues in these arbitration proceedings were

broad and sweeping. The record in this proceeding is voluminous. Notably, parties such as MCIm and AT&T submitted into the record proposed interconnection agreements as comprehensive as that now proposed in the MCIm agreement. Given the substantial opportunity accorded the parties, including USWC, to address the issues in this case, we conclude that the present proposals by MCIm are within the scope of this proceeding.

8. Furthermore, we now determine that it is appropriate for us to approve the specific language and terms which should be included in the interconnection agreement between the parties. Even though the Commission issued extensive guidance and directives in the prior arbitration decisions, the parties here are still unable to agree to the specific provisions of an interconnection contract. It is apparent to us that, without Commission directives regarding the precise language for an interconnection agreement, the parties will not or cannot come to an agreement. Therefore, to meet the purposes of the Act (e.g., to promote competitive entry in telecommunications markets through interconnection contracts between providers) it is appropriate that we specify the contractual language to be agreed to by the parties in their interconnection agreement.

9. With respect to USWC's last general objection to the MCIm agreement, that there is insufficient evidence in the record to justify many of the provisions suggested by MCIm, we emphasize that the directives contained in the instant decision are based upon the full arbitration record established in this proceeding. As noted above, that record is considerable. We also point out that the present decision, with one exception explained herein,<sup>3</sup> is consistent with our prior decisions in these proceedings. The instant decision is intended to implement our previous orders in this case. In general then, we reject USWC's arguments that the record fails to support a Commission order directing USWC to agree to a comprehensive interconnection contract. We find that the provisions set forth in Appendix A are, to the extent necessary, supported by the record in this proceeding.

10. In their April 10, 1997 joint comments, AT&T and MCIm pointed out that the Commission in its prior arbitration decisions appeared to indicate that access to poles, conduits, and rights-of-way should be reciprocal (e.g., between USWC and MCIm). See Decision No. C96-1337, at 87-88. The joint comments also point out that the Act specifically excludes incumbent

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<sup>3</sup> To the extent our prior decision directed MCIm or AT&T to provide reciprocal access to their rights-of-way, the present order modifies that directive for the reasons stated here.

local exchange carriers such as USWC from the automatic right to nondiscriminatory access to poles, ducts, conduits, and rights-of-way. Specifically, 47 U.S.C. § 224(f)(1) provides that, "A utility shall provide . . . any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." Since competing local exchange carriers such as AT&T or MCIIm qualify as a "utility" under the provisions of § 224(f)(1), they may be required to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to any "telecommunications carrier." However, the joint comments correctly observe that 47 U.S.C. § 224(a)(5) specifically excludes an incumbent local exchange carrier from the definition of the term "telecommunications carrier." As suggested in the joint comments, we interpret these provisions of the Act as not requiring reciprocal access to the poles, ducts, conduits, or rights-of-way of competing carriers on the part of USWC. Appendix A reflects this determination.

## **II. ORDERS**

### **A. The Commission Orders That:**

1. Within 30 days of the effective date of this Order, MCImetro Access Transmission Services, Inc., and U S WEST Communications, Inc., shall submit a complete, executed

interconnection agreement for consideration and approval by the Commission, pursuant to the provisions of 47 U.S.C. § 252(e). In the absence of express agreement to alternative provisions, the proposed agreement shall incorporate all provisions set forth in Appendix A to this Decision.<sup>4</sup>

2. Within 30 days of the effective date of this Order, AT&T Communications of the Mountain States, Inc., and U S WEST Communications, Inc., shall submit a complete, executed proposed interconnection agreement for consideration and approval by the Commission, pursuant to the provisions of 47 U.S.C. § 252(e). In the absence of express agreement to alternative provisions, the proposed agreement shall incorporate all provisions set forth in Appendix A to this Decision.<sup>5</sup>

3. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

4. This Order is effective on its Mailed Date.

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<sup>4</sup> In the event the parties agree to provisions different from those set forth in Appendix A, the application for Commission approval shall explain the differences.

<sup>5</sup> In the event the parties agree to provisions different from those set forth in Appendix A, the application for Commission approval shall explain the differences.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING May  
22, 1997.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

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