

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF)
CERTAIN TERMS AND CONDITIONS OF A)
PROPOSED AGREEMENT WITH GTE SOUTH) CASE NO. 96-440
INCORPORATED CONCERNING)
INTERCONNECTION AND RESALE UNDER)
THE TELECOMMUNICATIONS ACT OF 1996)

O R D E R

On December 23, 1996, the Commission entered its final Order deciding the arbitrated interconnection issues between MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. ("MCI") and GTE South Incorporated ("GTE"). MCI has requested reconsideration and clarification of certain issues contained in that Order. The Commission's decisions follow.

I. PROCESSES FOR ORDERING NETWORK ELEMENTS
AND REVIEWING COST STUDY METHODOLOGIES

MCI has asked for the creation of an expedited process to review orders for additional unbundled network elements. The Commission declines to establish a specific process but notes that, should MCI experience any difficulty in ordering additional unbundled network elements, it may file a petition with the Commission. Such a complaint will be handled as expeditiously as possible.

MCI requests that it be given an active role in the review of GTE's network element cost studies ordered to be filed. These GTE Total Element Long Run Incremental Cost ("TELRIC") studies will be filed in this proceeding to which MCI is

clearly a party. Accordingly, the Commission declines to establish a separate proceeding for the review of the TELRIC cost studies.

II. RESTRICTIONS ON SERVICES OFFERED FOR RESALE

Services to be Offered for Resale

MCI has requested clarification of the Commission's Order that services tariffed subsequent to the Order will be considered on a case-by-case basis. MCI is correct in its analysis that the Commission will require GTE to offer for resale at wholesale rates all services tariffed subsequent to the date of the Order unless GTE demonstrates to the Commission that resale of a particular service should not be required.

Inside Wire Maintenance and Voice Mail Service

The Commission in its original decision found that inside wire maintenance and voice mail service are not under its jurisdiction and, therefore, that it would not require GTE to offer these services for resale. MCI has asked the Commission to reconsider its decision. MCI has made a plausible argument for voice mail service. Voice mail service is a telecommunications service and does fall within the scope of the Act. MCI has failed to convince the Commission that inside wire maintenance plans fit this same category of telecommunications services. Inside wire maintenance plans may be offered by any individual willing to take the risks of this business venture. It does not require the use of the telecommunications network. Therefore, the Commission will require GTE to offer for resale voice mail service at the wholesale discounted rate. GTE may at its own discretion offer inside wire maintenance plans for resale.

Promotions of 90 Days or Less

MCI asked the Commission to clarify its Order that promotions lasting 90 days or less be made available for resale but that GTE need not provide these to MCI at any additional discount. Promotional incentives take many forms. In some cases monthly charges are reduced or waived. In other cases nonrecurring charges such as installation may be waived. These types of incentives are commonly offered by local exchange carriers ("LECs"). Promotions are not, however, "services" within themselves. MCI, under the Act, can resell any LEC tariffed service at the tariffed price less the wholesale discount and provide any promotional incentive it may consider necessary to meet a LEC's offering.

The Commission therefore clarifies its previous orders to the extent that services covered by a LEC's promotional offering are subject to the wholesale discount; however, the incentives are not. MCI or any other competitive LEC ("CLEC") is free to package the service and any promotional incentive it desires to respond to a similar promotional offering of a LEC.

Wholesale Rates

MCI has requested that the Commission allow MCI an opportunity to review and comment on the avoided cost study ordered to be filed by GTE. MCI is party to this proceeding and will be served all future filings made by GTE. Therefore MCI will have the opportunity to review GTE filings subject to appropriate confidentiality agreements.

III. ROUTING OF 0+, 0-, 411, 611, AND 555-1212 CALLS

MCI requests the Commission to clarify its decision concerning the routing of 0+, 0-, 411, 611 and 555-1212 calls. The Commission had decided that it would not require GTE to furnish wholesale tariff services minus operator services since GTE has no tariffed service without operator services included. Thus, an ILEC will not be required to sever its tariffed services from 0+ and 0- services when an ILEC is reselling its tariffed services. If an ILEC and a CLEC agree to a wholesale rate for a service without operator services, the Commission will accept such an arrangement. If, on the other hand, a CLEC provides service through purchase of unbundled elements, then the ILEC shall provide customized routing for 0+, 0-, 411, 611 and 555-1212 calls. The Commission modifies its December 23, 1996 Order to eliminate the statement that GTE shall retain 0+, 0-, 411, 611 and 555-1212 calls on an interim basis when selling unbundled elements. If an ILEC asserts that customized call routing is not technically feasible, it has the burden of proving its claim.

IV. COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC

MCI has sought clarification regarding the applicability of interconnection rates set forth in Appendix 1 of the December 23, 1996 Order to compensation for exchange of local traffic. The rates in Appendix 1 are the interconnection rates which apply to the first year of the contract if MCI does not elect bill and keep and which apply to the second year of the contract in any event. Should MCI or GTE become dissatisfied with the interconnection rates contained in Appendix 1, they may renegotiate rates to become effective upon the termination of this two-year contract.

V. UNUSED TRANSMISSION MEDIA

MCI asked for clarification on its ability to rebut GTE's determination that unused transmission media is unavailable. The Commission finds that MCI should be permitted to petition the Commission if it can demonstrate that GTE is unwilling to cooperate. The Commission also amends this section of its Order to change the time period for which GTE must plan for the utilization of unused transmission media from five (5) years to three (3) years. This shorter time frame conforms to a more reasonable LEC planning cycle and will enable the carrier to review budgeting plans.

VI. PERFORMANCE STANDARDS AND PROCEDURES, LOOP TESTING AND INDEMNIFICATION AND LIABILITY

MCI requests that the Commission require GTE to prepare periodic comparative reports on its service quality to enable MCI to determine whether MCI's customers are receiving service equal to the quality GTE provides to its customers. However, GTE is required to provide the same quality of service to MCI as it provides to itself, and there does not appear to be any reason to assume GTE will not in good faith comply with this requirement. Should MCI have a basis on which to allege that a poorer quality of service is being delivered to its customers than to GTE's, then it should immediately bring this matter to the Commission's attention through a petition.

VII. NOTICE OF SERVICE CHANGES

MCI requests reconsideration of the Commission's determination that 45-days' notice of a change in GTE service was reasonable. MCI has requested that the notice be extended to "no less than 45 days and as soon as GTE's relevant internal groups are aware of any change." But even MCI admits that 45 days is "likely to be a reasonable

amount of time."¹ The Commission confirms its original ruling. However, on a case-by-case basis, should 45-days' notice of a change appear inadequate, MCI may petition the Commission for additional time prior to the implementation of GTE service changes.

The Commission, having considered MCI's motion for clarification and reconsideration, and having been otherwise sufficiently advised, HEREBY ORDERS that the December 23, 1996 Order is affirmed in all respects except as modified herein.

Done at Frankfort, Kentucky, this 4th day of February, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

¹ MCI Petition at 14.