

appealed by a number of parties, including this Commission.

By Order dated September, 10, 1996, the Commission requested that the parties file additional comments, consistent with the FCC's First Report and Order, regarding possible timelines and any other issues raised by the FCC's order concerning the filing of interconnection agreements negotiated before the date of the federal Act.

On July 18, 1997, the United States Court of Appeals for the Eighth Circuit issued its decision regarding the appeal of the FCC's First Report and Order. With respect to the issue concerning the filing of interconnection agreements, the Court ruled that the FCC did not have jurisdiction to issue 47 C.F.R. § 51.303. The Court concluded that the issue of whether preexisting interconnection agreements must be submitted for state commission approval was left to the state commissions.

A regularly scheduled July 29, 1997, meeting, the Commission again asked the parties what their respective positions were in light of the Court's ruling. After listening to the parties' positions, the Commission took the matter under advisement. A September 9, 1997, meeting, the Commission again considered the matter. The Commission unanimously voted to deny AT&T's and MCI's petitions.

The language at issue is found in 47 U.S.C. § 252(a)(1) which reads as follows:

Upon receiving a request for interconnection, service, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

The Commission finds that the language of this statute does not require the filing of all interconnection agreements entered into prior to the federal Act. The Commission interprets the statute to require that only if a negotiated agreement is filed pursuant to section 252, is there any obligation to file additional, currently effective interconnection agreements that were entered into between the same parties prior to the federal Act. By the use of the word "including," the last sentence of section 252(a)(1) clearly links the filing of an interconnection agreement which was negotiated after the passage of the federal Act with the filing of interconnection agreements negotiated prior to the federal Act.

The Commission rejects the position taken by some of the parties that all interconnection agreements filed prior to the passage of the federal Act must be filed and approved by the Commission. Besides being inconsistent with the language of the statute, the Commission finds that it makes little sense for all interconnection agreements filed prior to the federal Act to be subject to the same approval requirements as those interconnection agreements negotiated after the federal Act. The parties entering into interconnection agreements prior to the Act should not be retroactively subjected to the requirements of section 252. On the other hand, requiring prior interconnection agreements to be filed with agreements negotiated after the federal Act is logical since those prior interconnection agreements that are still in effect would

necessarily be part of the new negotiated agreement and, thus, would need to be approved by the Commission in accordance with the standards of section 252.

It is therefore

ORDERED, that the petitions of AT&T and MCI requesting that the Commission order all interconnection agreements negotiated prior to the passage of the federal Act to be filed with the Commission are denied for the reasons set forth above.

Dated at Pierre, South Dakota, this 18th day of September, 1997.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>	<p style="text-align: center;">BY ORDER OF THE COMMISSION:</p> <p>_____</p> <p style="text-align: center;">JAMES A. BURG, Chairman</p> <p>_____</p> <p style="text-align: center;">PAM NELSON, Commissioner</p> <p>_____</p> <p style="text-align: center;">LASKA SCHOENFELDER, Commissioner</p>
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