Service Date: February 12, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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| IN THE MATTER OF a Tariff Filing<br>By Ronan Telephone Company Containing<br>The Rates, Terms and Conditions for<br>Reciprocal Compensation Pursuant to<br>47 U.S.C. § 251(b)(5) and § 69-3-834(2), MCA. | )<br>)<br>)<br>)<br>) | UTILITY DIVISION<br><br>DOCKET NO. D2000.1.14<br>ORDER NO. 6225g |
| RONAN TELEPHONE COMPANY,<br><br>Complainant,<br><br>v.<br><br>BLACKFOOT TELEPHONE COOPERATIVE, INC., BTC HOLDINGS, INC., CLARK FORK TELECOMMUNICATIONS, INC., MONTANA WIRELESS, INC., BLACKFOOT TEL-COM, INC., and BLACKFOOT FIBER SYSTEMS, INC.,<br><br>Respondents. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UTILITY DIVISION<br><br>DOCKET NO. D2000.5.63<br>ORDER NO. 6404d |

**FINAL ORDER**
**AND ORDER CLOSING DOCKET**

## Introduction and Procedural Background

1. This agreement reflects a long and difficult settlement process between two very contentious parties. The Commission appreciates the effort and time that the parties have expended in resolving their differences in this agreement. As described below, the Commission has sought to reach a decision that will allow as much of the settlement to be approved as possible.

2. This docket has its genesis in Blackfoot Telephone Cooperative, Inc's (Blackfoot) and Montana Wireless, Inc.'s (MWI)[1] request for interconnection negotiations with Ronan

[1] Blackfoot and MWI are referenced interchangeably throughout this order; Ronan is also referred to as "RTC."

Service Date: March 17, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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| IN THE MATTER OF a Tariff Filing By Ronan Telephone Company Containing The Rates, Terms and Conditions for Reciprocal Compensation Pursuant to 47 U.S.C. § 251(b)(5) and § 69-3-834(2), MCA. | ) | UTILITY DIVISION<br><br>DOCKET NO. D2000.1.14<br>REVISED ORDER NO. 6225g |
| RONAN TELEPHONE COMPANY,<br><br>Complainant,<br><br>v.<br><br>BLACKFOOT TELEPHONE COOPERATIVE, INC., BTC HOLDINGS, INC., CLARK FORK TELECOMMUNICATIONS, INC., MONTANA WIRELESS, INC., BLACKFOOT TEL-COM, INC., and BLACKFOOT FIBER SYSTEMS, INC.,<br><br>Respondents. | ) | UTILITY DIVISION<br><br>DOCKET NO. D2000.5.63<br>REVISED ORDER NO. 6404d |

**REVISED FINAL ORDER**
**AND ORDER CLOSING DOCKET***

## Introduction and Procedural Background

1. This agreement reflects a long and difficult settlement process

* Revised pursuant to a Stipulation for Dismissal of an appeal (United States Court of Appeals for the 9th Circuit) of the Opinion and Order of the United States District Court for the District of Montana, CV 03-20-H-CCL, issued March 28, 2005.

between two very contentious parties. The Commission appreciates the effort and time that the parties have expended in resolving their differences in this agreement. As described below, the Commission has sought to reach a decision that will allow as much of the settlement to be approved as possible.

2. This docket has its genesis in Blackfoot Telephone Cooperative, Inc's (Blackfoot) and Montana Wireless, Inc.'s (MWI)[1] request for interconnection negotiations with Ronan Telephone Company (Ronan) on November 23, 1998. Blackfoot sought to establish a reciprocal compensation agreement under 47 U.S.C. § 251(b)(5) with Ronan. Ronan refused to negotiate with Blackfoot to establish an agreement. On April 27, 1999, Ronan filed an application with the Montana Public Service Commission (PSC or Commission), requesting that the provisions of 47 U.S.C. § 251(b), which set forth the obligations of a local exchange carrier to interconnect, be suspended with respect to Ronan.[2] Ronan claimed that it was exempt from the interconnection obligations of § 251(b) by application of the rural exemption provision contained in 47 U.S.C. § 251(f)(2). One day later, Blackfoot and MWI petitioned for arbitration under 47 U.S.C. § 252, asking the Commission to arbitrate Blackfoot and MWI's request for a

[1] Blackfoot and MWI are referenced interchangeably throughout this order; Ronan is also referred to as "RTC."
[2] Docket No. D99.4.111, filed April 27, 1999.

reciprocal compensation agreement with Ronan.[3] The Commission denied Ronan's application to suspend the interconnection obligations of § 251(b), and that docket was closed.[4]

3. In the arbitration proceeding, Ronan filed a motion to dismiss the proceeding, arguing that 47 U.S.C. § 251(f)(1)(A) exempted it from negotiating a reciprocal compensation arrangement with Blackfoot or MWI, unless that exemption was terminated pursuant to 47 U.S.C. § 251(f)(1)(B). Although Ronan took the position that it had no obligation to arbitrate or negotiate a reciprocal compensation arrangement, it conceded that it has a duty under 47 U.S.C. § 252(b)(5) to provide reciprocal compensation arrangements upon request. The Commission dismissed the arbitration, concluding that 47 U.S.C. § 252(a) and (b) require a party to negotiate prior to arbitration. Ronan's exempt status under 47 U.S.C. § 251(f)(1)(A) allowed Ronan to avoid negotiation, and the Commission could not arbitrate until negotiation had occurred. Therefore the arbitration was dismissed.[5]

4. Although the Commission granted Ronan's motion to dismiss the arbitration proceeding, Ronan nevertheless had a duty to establish reciprocal

[3] Dockets No. D99.4.112 and D99.2.113.
[4] Docket No. D99.4.111, Order 6174e.
[5] Docket No. D99.4.112, Order No. 6218a; Docket No. D99.4.113, Order No. 6219a.

compensation arrangements for carriers requesting such an arrangement.[6] Ronan conceded it had such an obligation.[7] In order to implement the interconnection obligations imposed by the 1996 Act, the commission directed Ronan to file a tariff, providing the details of a reciprocal compensation arrangement that would be available to interconnecting carriers desiring such an arrangement.[8] The Commission directed Ronan to file a tariff by February 8, 2000, that complied with FCC rules on reciprocal compensation, 47 C.F.R. § 51.701 – 51.717.

5. Ronan filed a tariff on February 8, 2000, pursuant to 69-3-810, MCA, and noticed the application pursuant to PSC rules. Comments were received and the tariff filing was suspended pending a full contested case hearing.[9] The Montana Consumer Counsel (MCC), CenturyTel of Montana, Inc. (CenturyTel), and Montana Wireless, Inc. (MWI) intervened as parties in the docket. After discovery began, the Commission issued an Order clarifying the purpose of the tariff filing. "This docket is, in effect, a substitute for arbitration proceedings to determine the rates, terms and conditions of reciprocal compensation for

[6] 47 U.S.C. § 251 (b)(5), § 69-3-834(2)(b), MCA, Commission Order Nos. 6219a and 6219b, Conclusions of Law, paragraph 5.
[7] Ronan Motion to Dismiss, Docket Nos. D99.4.112 and D99.4.113, p.4, fn. 3, December 22, 1999.
[8] Order No. 6225, Docket No. D2000.1.14.
[9] Notice of Application, Service Date March 3, 2000, Docket No. D2000.1.14.

interconnection with RTC."[10] By Order of the Commission, an interim bill and keep arrangement was established between MWI and Ronan, subject to true-up, pending hearing and final decision on the reciprocal compensation tariff filing.[11] On August 31, 2000, a hearing was held before Commissioners Anderson, Feland and Rowe. Ronan requested that the decision in this docket be made by all five commissioners, and that request was granted.[12] The briefing in the docket was completed on November 20, 2000.

6. During this same time period, separate dockets involving litigation between Ronan and Blackfoot were initiated at the PSC.[13] Although unrelated to the issues contained in D2000.1.14, the issues raised in those dockets (D2000.2.27 and D2000.5.63) were complex, and bore on the parties' willingness to settle amicably the interconnection dispute contained in D2000.1.14. On February 27, 2002, a motion to dismiss filed by Blackfoot in D2000.5.63 was denied, and D2000.2.27 and D2000.5.63 were consolidated (D2000.2.27 dismissed and closed), and a procedural schedule entered. During the spring of 2002,

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[10] Order No. 6225c, Docket No. D2000.1.14, pp. 1-2.
[11] Order No. 6226d, Docket No. D2000.1.14, service date June 1, 2000; also Order No. 6225f, Docket No. D2000.1.14, service date July 19, 2000.
[12] Notice of Commission Action, service date January 31, 2001, Docket No. D2000.1.14.
[13] D2000.2.27, filed in February of 2000, involved allegations about internet provision in schools; and D2000.5.63, filed in May of 2000, involved allegations of misuse of universal service funds.

continuances of the procedural schedule were requested and granted pursuant to the parties' representations that settlement negotiations were pending.[14]

## Pending Dockets Before the Commission

7. On July 12, 2002, Blackfoot and Ronan filed a Settlement Agreement in Dockets No. D2000.1.14 and D2000.5.63, requesting Commission approval of the agreement and indicating that a compliance tariff would be filed upon approval of the agreement. The agreement was not served on MCC and CenturyTel, also parties in D2000.1.14.[15] On October 29, 2002, the Commission conditionally approved the settlement agreement. The Commission's approval was conditioned on: subsequent approval, after notice and an opportunity to comment period, of a compliance tariff; the requirement that any governing statute, administrative rule or PSC Order would control the issues presented in this settlement agreement rather than the terms of the agreement; and clarification that the commission was not, in conditionally approving the agreement, authorizing or approving of any waiver of legal rights and obligations.

8. Ronan and Blackfoot filed their compliance tariff as required on November 14, 2002. On December 4, 2002, a Notice of Opportunity to Comment

[14] See Motion for Continuance, filed May 17, 2002 by Ronan, in D2000.5.63.
[15] See "Ronan-Blackfoot Settlement Agreement, Dockets No. D2000.1.14 and D2000.5.63,"

was issued, seeking comments on the settlement agreement from interested persons and parties.[16] Comments were received from the MCC and from Qwest Corporation. Ronan objected to the comments of Qwest on the grounds that allowing comments from Qwest was the equivalent of allowing Qwest late intervention as a party in the docket. Ronan's objection was denied. The comments of Qwest and MCC shall be considered in the commission's decision on the settlement agreement.[17] Due to a change in commissioners as a result of the 2002 elections, a quorum of commissioners having heard the August, 2000 proceeding was no longer available. Consequently, Commissioner Rowe was appointed hearings examiner for purposes of issuing a proposed order on the settlement agreement.[18] On February 3, 2003, all parties in the docket filed a Waiver of Proposed Order as permitted by Section 2-4-622(2), MCA. The Commission accepted the parties' Waivers and acted to issue a Final Order in this docket as requested by the parties.

9. The Commission must decide whether or not to approve or reject the settlement agreement, or whether or not to approve parts of the agreement while rejecting other parts. Approval or rejection of the agreement will turn in part on

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filed July 12, 2002.
[16] Notice of Opportunity to Comment, filed on December 4, 2002.
[17] Notice of Commission Action, filed January 27, 2002.

the level of review that is required. The appropriate level of review is determined by a finding as to whether the agreement between Ronan and Blackfoot is a negotiated interconnection agreement or an arbitrated interconnection agreement. 47 U.S.C. § 252(e)(2).

**The Settlement Agreement is a Negotiated Interconnection Agreement**

10. The settlement agreement purports to resolve issues contained in Docket No. D2000.1.14. Ronan and Blackfoot, in the settlement, agree to adopt the tariff filed on February 8, 2000 as filed, to forego any objections that might be raised to the tariff, and to extend it for a period of five years. The tariff filed on February 8, 2000, was Ronan's response to commission direction to file a tariff that complied with FCC rules on reciprocal compensation, 47 C.F.R. § 51.701 – 51.717 and that would, in effect, be a substitute for arbitration proceedings to determine the rates, terms and conditions of reciprocal compensation upon which another carrier could interconnect with Ronan. That direction was necessary because Ronan had invoked the rural exemption provision of 47 U.S.C. § (f), but was obligated to interconnect as provided in § 251(b). Requiring a tariff filing was a mechanism that allowed the commission, through a contested case, to establish terms and conditions for interconnection. The tariff filing, as a contested case

[18] Notice of Commission Action, filed January 6, 2003.

proceeding, was no different than an arbitrated interconnection agreement, except that there were parties to the case (CenturyTel and MCC), one of which (CenturyTel) would not have been allowed to participate had the proceeding remained titled an "arbitration." Section 69-3-837(7), MCA and 47 U.S.C. § 252(b).

11. After the hearing on the tariff filing in August of 2000, Ronan and Blackfoot negotiated and entered into an agreement that allowed Blackfoot to interconnect with Ronan, which they filed with the commission for approval on July 12, 2002. Ronan and Blackfoot, in entering into the settlement agreement, negotiated an interconnection agreement. The settlement agreement is a negotiated agreement that authorizes terms and conditions for interconnection. Responding to comments on the agreement, Ronan argues that "[t]hese rates constitute a negotiated arms-length compromise of disputed issues between two very contentious parties, and the compromised rates are fully supported by the law and the record"[19] and that "[t]he rates in the Tariff are obviously a negotiated compromise between Blackfoot and RTC, to which they both have been able to agree."[20]

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[19] Ronan Telephone Company Response to Comments, filed on December 30, 2002, in Dockets No. D2000.1.14 and D2000.5.63, p. 6, ll. 11 – 13 (internal footnote omitted).
[20] Id. at page 12, lines 16-17.

12. This proceeding began as an arbitrated interconnection agreement. It became a contested case tariff proceeding in order to allow Ronan it's claimed exemption under 47 U.S.C. § 251(f), and to entitle Blackfoot to interconnect as required by 47 U.S.C. § 251(b). This proceeding has concluded as a negotiated interconnection agreement with the settlement agreement filed with the commission on July 12, 2002.

13. In reaching their agreement, Ronan and Blackfoot did not include two parties in the negotiations: CenturyTel and the MCC. In addition, Ronan and Blackfoot failed to serve copies of the negotiated agreement on CenturyTel and the MCC. Consequently, the MCC and CenturyTel did not have notice that the agreement between Blackfoot and Ronan had been negotiated until the commission issued its Notice of Opportunity to Comment on December 4, 2002.

## Legal Standard: Level of Review by the Commission

14. An interconnection agreement, whether it is negotiated or arbitrated, is required to be submitted to the State commission for review. 47 U.S.C. § 252(e)(1). The standards for approving an interconnection agreement differ, depending on whether the agreement has been voluntarily negotiated or has been arbitrated by a state commission. 47 U.S.C. § 252(e)(2). The Agreement

submitted for approval in this proceeding was negotiated voluntarily by the parties and thus must be reviewed according to the provisions in 47 U.S.C. § 252(e)(2)(A).

15. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by voluntary negotiation:

> (2) GROUNDS FOR REJECTION. – The State commission may only reject –
> (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity[.]

16. Notwithstanding the limited grounds for rejection in 47 U.S.C. § 252(e)(2)(A), the Commission's authority is preserved in § 252(e)(3) to establish or enforce other requirements of Montana law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to § 253 of the 1996 Act, which does not permit states to impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

17. Unlike an agreement reached through arbitration, a voluntarily

negotiated agreement need not comply with standards set forth in §§ 251(b) and (c). 47 U.S.C. §§ 251(b), 252(c) and 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection even though they may not meet the just, reasonable and nondiscriminatory standard and even if they are using pricing standards other than those included in § 252(c) of the Act. The "just, reasonable and nondiscriminatory" standard and pricing standards in § 252(c) would be required in the case of arbitrated rates set by the Commission.

18. Comments from the MCC and from Qwest[21] indicate that the agreement, as specifically discussed below, does not comply with federal law or with state telecommunications requirements, and that it is not consistent with the public interest, convenience and necessity.

## Analysis of Ronan – Blackfoot Interconnection Agreement

19. The MCC's comments address five separate issues and briefly respond to questions the Commission raised. The MCC's initial comments include the following.

20. In comments on the geographic scope of local wireless calls, the MCC asserts that the proposed settlement agreement and compliance tariff attempt to

[21] For extent of Commission consideration of comments of Qwest, not a party to this docket, see Notice of Commission Action, dated January 27, 2003, Docket Nos. D2000.1.14, D2000.5.63.

limit the wireless traffic included as local traffic. Sections II.D, II. K and III. J, limit local traffic to an area less than the entire Major Trading Area (MTA).[22] This limitation, however, ignores the FCC's rules (§51, Subpart H, Title 47). MCC concludes that parties cannot by agreement change the FCC rule in a way that contradicts the rule.

21. On the issue of cost-based reciprocal compensation rates, the MCC asserts that the FCC's rules require reciprocal compensation rates to be determined and structured consistent with cost incurrence. If either the default proxy or the bill-and-keep alternative is not used, then rates must be based on Ronan's own costs. MCC holds the $.045 rate in the RTC and Blackfoot settlement is arbitrary, having no apparent cost basis. Additionally, the basis of the $.08837 rate RTC filed in the case is highly flawed. The MCC advises the Commission to reject the rate.

22. The MCC explains when the FCC's rules require symmetrical reciprocal compensation rates. Rates must be symmetrical unless a CLEC (competitive local exchange carrier) can prove a higher rate for the LEC (local

[22] Per Section II. D., local telecommunications service includes telephone calls which originate and terminate within the wireline service area of RTC consisting of the communities of RTC and Pablo, except as otherwise excluded in this tariff; wireless CMRS traffic is limited to the geographic calling areas specified in this tariff; and it excludes all other telecommunications traffic excluded in Section III. J. or by other tariff provisions. Section III. J provides, in part, that the following services will not be provided: inter-MTA traffic and traffic otherwise excluded by terms of the tariff.

exchange carrier). That is, the rate should be the same in both directions.

23. Because the settlement agreement and the compliance tariff force rates on all CLECs that might want to enter Ronan's service area the MCC also argues that the agreement and tariff are not in the public interest and should be rejected. MCC doubts that any (other) competitor would enter Ronan's market if the settlement agreement is accepted. The MCC concludes that the proposed settlement and compliance tariff rates violate FCC rules and should be rejected.

24. The MCC believes that the definition of local traffic in the settlement agreement and the compliance tariff appears unlawful. It appears unlawful because it makes transit carriers liable for compensation that should be the responsibility of the calling party's network.[23] The MCC notes this Commission previously held that a carrier who transports third-party traffic has no obligation to

[23] Section II. E. of RTC's tariff provides: Transit traffic: Local traffic delivered to RTC's network pursuant to this schedule by a CLP for termination to a RTC end user that originates from an end user served by any carrier other than the CLP, or is carried in part by an carrier other than the CLP who ordered this service. Traffic originating from an end user served by an affiliate of a CLP or originated from or transited through the network(s) of an affiliate of the CLP shall also be deemed transiting traffic. Transiting traffic also includes local traffic originating from RTC end users that transits the CLP network and terminates to end users served by any carrier other than the CLP who ordered this service or is carried in any part by a carrier other than the CLP Traffic terminating to end users served by an affiliate of a CLP or transited through the network(s) of the affiliate of the CLP to end users served by any other carrier shall also be deemed transiting traffic. RTC's tariff at Section III. J. 14, states that the Company will not provide DS1 Local Transport and Termination Service for Transit Traffic; and Section III. K. states that the services listed "above" (an apparent reference to Section III. J.) will be provided pursuant to RTC's Access Service Tariff.

compensate the terminating carrier under § 252(d)(2)(A) of the 1996 Act (see Docket No. D96.9.150, Order No. 5949b, Findings 32-33). MCC concludes that this is another reason to reject both the settlement and compliance tariff.

25. Except for limited responses to the Commission's questions, Qwest's comments focus on the transit traffic issue. Qwest's comments buttress the transit traffic concern raised by the MCC.

26. The Commission finds that with some revisions the July 12, 2002 settlement agreement filed by Ronan and Blackfoot may be approved as a compliant negotiated interconnection agreement. The Commission's main concern is the settlement agreement's applicability to "any and all" carriers. The price term could be approved if the settlement agreement were confined to RTC and BFT, and assuming that the agreement is a negotiated agreement per § 252 of the 1996 Act. The geographic scope of calling areas could also be approved if the agreement were limited to RTC and BFT. These issues appear resolvable if the interconnection agreement is not applicable to "any and all" carriers. The Commission also concludes that some revisions to the transiting traffic provisions are necessary. ~~The transit traffic issue, however, differs. In order to gain the Commission's approval, the settlement agreement must be revised to not assess carrier access charges on all terminating traffic not subject to reciprocal~~

~~compensation.~~ If the parties agree to revise to limit this negotiated interconnection agreement to just RTC and BFT, then the Commission may approve the agreement as satisfying the 1996 Act's standard of review.

## Findings of Fact

27. The Commission's analysis and findings are structured along the lines of the settlement agreement's structure and apply to associated sections in the compliance tariff.

28. Definitions: The Commission generally finds the definitions section to be reasonable. ~~In regard to "transiting traffic" the Commission is unsure whether the definition is not discriminatory or in the public interest.~~

> ~~Local traffic delivered to RTC's network pursuant to this tariff by a CLP (Competing Local Provider) for termination to a RTC end user that originates from or is carried in part by any carrier other than the CLP who ordered this service. Traffic originating from an affiliate of a CLP shall also be deemed transiting traffic. Transiting traffic also includes local traffic originating from RTC end users that transits the CLP network and terminates to any carrier other than the CLP who ordered this service or is carried in any part by a carrier other than the CLP. Traffic terminating to an affiliate of a CLP shall also be deemed transiting traffic.~~

~~The Commission's concern with transiting traffic is more fully addressed in response to Section 3 below. As there is no definition provided in this agreement, a definition for "CLP" must be included.~~

29. Section 1 (of July 12, 2002 Settlement Agreement) and Interconnection Agreement, Paragraphs 25, 27 and 28: The Agreement provides for asymmetric reciprocal-compensation rates for any and all wireline and wireless carriers for the exchange of local traffic. In regard to these rates it also allows RTC and BFT to not concede to or accept any rate-making methodology. BFT agrees to drop all objections to the PSC's approval of the amended tariff and supports PSC approval of same. RTC's agreement is contingent on the PSC's unaltered approval of the amended tariff; both RTC or BFT have 30 days from a Commission final order to elect to withdraw from the agreement if altered (except as otherwise amended by this Agreement the approved tariff should be the tariff as filed by RTC on February 8, 2000). The Commission finds that in order to approve this section it must be altered slightly to be in the public interest; the agreement must be altered to apply to just the two parties -- Ronan and Blackfoot. As it is written this section is rejected.

30. ~~Section 2~~ Interconnection Agreement, Paragraph 36: During the 5-year term of this agreement the parties agree not to seek amendments to this agreed to tariff – except as end-user charges may be allowed by Section 7. The Commission finds this paragraph ~~section~~, if applied to Ronan and Blackfoot only, to be reasonable.

31. ~~Section 3~~ Interconnection Agreement, Paragraphs 11, 14, 15, 16, 20, 21, and 22 : ~~This section~~ These sections establish~~es~~ the conditions and then circumscribes the types of traffic that qualify for reciprocal compensation or that are subject to access charges. It includes provisions which exclude ISP traffic and transiting traffic from the Ronan/Blackfoot interconnection. The Commission finds two necessary revisions. First, the Commission has concern with how the agreement charges for transit traffic. The commission notes the above comment on the definition of such traffic and defers to Section 6 below a full discussion on the revision. Second, whereas the "interconnection arrangement" excludes ISP, internet and data traffic, the Commission finds that it is not in the public interest to exclude data traffic. For example, if an end user on Ronan's system wishes to exchange data with an end user on the CLP's system, this section has the apparent effect of prohibiting such an exchange. As filed, such traffic would be subject to carrier access charges, and not reciprocal compensation. However, such traffic is local traffic, just not local voice traffic. This exclusion appears elsewhere in the settlement agreement. The Commission's finding here applies with the same force where the same exclusion appears elsewhere in the settlement agreement. As written, this Section is rejected. Although ISP traffic is excluded by the Agreement, direct data connections between end users are permitted. The

Agreement contains no exclusion for data traffic and permits direct data exchange. The Commission finds these ISP and data transmission provisions to be reasonable, and approves them. ISP-bound traffic shall be excluded and prohibited over the interconnection.

With respect to transiting traffic, the Commission determines that some modifications to the Agreement are necessary to comport with the public interest. The Commission finds that transiting traffic should be allowed over the interconnection, subject to the following conditions:

a. Blackfoot will be solely responsible for payment of the appropriate rate to Ronan, for all traffic, including transiting traffic, which is transmitted to Ronan for termination over the interconnection governed by the Agreement;

b. The Agreement does not include but does not preclude that the originating carrier may also be responsible for payment of charges for transmitting traffic to Ronan for termination, under another Agreement, tariff, or compensation arrangement. Third parties are not obligated under this Agreement unless they choose to opt-in to this Agreement, or are legally bound by some other Agreement, tariff or arrangement.

c. The rates for transiting traffic shall depend upon the nature of the traffic. Blackfoot shall be responsible for payment of the reciprocal compensation

termination rate contained in the Agreement (4.5 cents per minute) for all "local" traffic, which includes Ronan intraexchange wireline traffic and intra-MTA traffic (traffic originating in the "Spokane Major Trading Area" as defined by the FCC, and terminating in Ronan). For non-local traffic, which includes interexchange/non-EAS wireline traffic and inter-MTA wireless traffic, the appropriate Ronan tariffed carrier access charges shall apply, and shall be paid by Blackfoot.

d. Ronan shall have the right to terminate service to Blackfoot if Blackfoot does not pay for all traffic transmitted for termination in accordance with the parties' Agreement.

e. The same conditions apply for any transiting traffic from Ronan transmitted to Blackfoot. Ronan is only responsible to Blackfoot, and to no other carrier, for payment of reciprocal compensation rates for traffic Ronan transmits to Blackfoot for termination.

f. The geographic scope of transiting traffic shall be limited as provided in the parties' Agreement (Stipulation, ¶¶3 and 6, Tariff Sections II.D.3., III.O. and III.P.).

32. ~~Section 4~~ Interconnection Agreement, Paragraph 23 and 24 : ~~This section~~ These paragraphs provide~~s~~ for auditing of Blackfoot traffic carried over

Ronan's DS1 facilities. The Commission finds this provision reasonable for an agreement applied only to Ronan and Blackfoot, and approves this Section as it pertains to Ronan and Blackfoot.

33. Section 5 (of July 12, 2002 Settlement Agreement): The parties waive rights to true-ups for any net reciprocal-compensation charges accruing until the Commission otherwise approves of the accompanying tariff. This section also applies to Ronan and Blackfoot only. The agreement to waive true-up charges is reasonable and this section is approved.

34. ~~Section 6~~ Interconnection Agreement, Paragraphs 20, 21, 22 and 38: ~~This section~~ These paragraphs provide~~s~~, in part, for the applicable scope of reciprocal-compensation rates for traffic exchanged between Ronan and Blackfoot. ~~Except as noted below, the Commission has no objection to including this section in an interconnection agreement between Ronan and Blackfoot. The Commission has two concerns. First, this section provides for carrier access charges as the rates charged for "[a]ll other traffic not described above, or not included as reciprocal compensation in the tariff…." This provision, in combination with its applicability to "any and all wireline and wireless carriers" (Section 1), appears, in part, the foundation for the transit traffic issue raised in MCC's comments and as discussed by Qwest. The agreement must be altered to clearly establish that carrier access~~

~~charges will not apply to transit traffic carried by Qwest or other similarly situated providers of transit traffic service. Such an amendment should address any unintended consequence, real or perceived, of applying carrier access charges to transit traffic. As it is written, this Section is rejected. Second, the Commission again notes that section 6 imposes a restriction on the transmission of data in addition to internet traffic. The Commission's concern with the settlement agreement's blocking of data traffic is addressed in Section 3 above.~~ The Commission finds these paragraphs reasonable, with the modifications to the transiting traffic provisions contained in Paragraph 31 above. The Commission notes that the parties' Agreement and this Order have no applicability to or effect on Qwest or to the traffic carried by Qwest to Ronan over the long distance trunk group.

35. ~~Section 7~~ Interconnection Agreement, Paragraph 37: Unless requested by the Commission, and based on reciprocal compensation charges resulting from this agreement's tariff, each party agrees not to object to the other party's initiation of a proceeding that imposes end-user charges on its own subscribers. The Commission finds this ~~section~~ paragraph reasonable for an interconnection agreement between Ronan and Blackfoot, and approves this ~~Section.~~ paragraph.

36. Section 8 (of July 12, 2002 Settlement Agreement): This section discusses the legal relation of this docket to the status and procedures associated with Dockets No. D2000.5.63 and D2000.2.27. This Section is approved with respect to Docket No. D2000.5.63. Docket No. D2000.5.63 is dismissed. The second cause of action Docket No. D2000.2.27 it is dismissed without prejudice, and is closed with respect to this proceeding.

37. Section 9 (of July 12, 2002 Settlement Agreement): This section explains, in part, what traffic between MWI and Ronan can be carried over an existing trunk group and when MWI may order additional circuit capacity. The Commission finds this section reasonable for an interconnection agreement between Ronan and Blackfoot, and approves this Section.

38. Section 10 (of July 12, 2002 Settlement Agreement): This section regards the legal relationship between this agreement and the D2000.5.63 "Cause of Action." In the context of a subsidy discussion, the agreement addresses the potential cross subsidization of investments by placing conditions on facility and service expansions and then relates these conditions to the legal "Second Cause of Action" in D2000.2.27, which is to be separated from D2000.5.63. The Commission is uncertain about the consequences of one sentence in this section. It reads:

> If either party expands its voice services or facilities beyond what each is currently providing in the other's service area, either by adding new types of voice service or voice facilities or expanding the geographic area in which voice service or voice facilities are provided within the other party's service area, then the other party shall have the right to pursue any and all legal remedies which are available to it, including but not limited to a complaint for misuse of subsidies, illegal cross-subsidy of competitive services, and/or anti-competitive conduct (including for example, re-filing the Complaint being dismissed in Docket No D2000.5.63).

The Commission's concern is that, as with other aspects of this settlement agreement, the implications of this provision are uncertain. It is unclear, for example, what all limitations are contemplated by "expanded voice services offering" and "voice facilities and by expanding the geographic areas." Clearly this section like many others is not meant at all to be generic but rather constraining on the parties, Ronan and Blackfoot. As applied to Ronan and Blackfoot only this section is approved, subject to the terms of paragraph 35 above, dismissing Docket Nos. D2000.5.63 and D2000.2.27.

39. Section 11 (of July 12, 2002 Settlement Agreement): The 833 nxx local, geographic, calling area is to be frozen for five years but an additional nxx may be requested by MWI within the same area. The Commission does not find this an unreasonable for an agreement between Ronan and Blackfoot. If applied to Ronan and Blackfoot only, it is acceptable.

40. ~~Section 12~~ Interconnection Agreement, Paragraph 34: Since Blackfoot, CFT and Ronan are rural companies under § 251(f)(1), neither line sharing, nor the purchase/use of UNEs combined to provide the equivalent of line sharing, is required. And, for five years no party will seek or request to lift the rural exemption pursuant to 47 U.S.C. § 251(f)(1)(A) or (B). This ~~Section~~ paragraph is approved to the extent it binds Ronan and Blackfoot only.

41. Section 13 (of July 12, 2002 Settlement Agreement): This section concerns Docket No. D2002.3.33. RTC agrees to limit any comments filed with the Commission to ones that support general goals of the NOI that protect against the misuse of subsidies and serve to maintain a level competitive playing field. The Commission finds an agreement limiting participation in pending dockets as contrary to the public interest and this Section is rejected.

42. ~~Sections 14 through 18~~ Section 17 (of July 12, 2002 Settlement Agreement) and Interconnection Agreement, Paragraphs 39, 40, 41, and 42: The provisions in these sections appear, for the most part, contractual obligations imposed on Ronan and Blackfoot. The Commission finds these provisions reasonable as applied to Ronan and Blackfoot only.

## Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Ronan is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to review interconnection agreements. 47 U.S.C. § 252(e)(1).

3. The settlement agreement filed on July 12, 2002 is a negotiated interconnection agreement.

4. The Commission may only reject a negotiated agreement if: (a) it discriminates against a nonparty to the agreement (47 U.S.C. § 252(e)(2)(A)); or (b) it is not consistent with the public interest, convenience and necessity.

5. The Commission may reject a portion of a negotiated agreement and approve the remainder of the agreement if such action is consistent with the public interest, convenience and necessity and does not discriminate against a carrier not a party to the agreement. 47 U.S.C. § 252(e)(2)(A).

## Order

THEREFORE, based upon the foregoing, it is ORDERED that the agreement of the parties submitted to this Commission for approval pursuant to the 1996 Act is approved subject to the following condition:

~~The parties shall have 30 days to file amendments to bring their agreement into compliance with the Commission's decision~~.

IT IS FURTHER ordered that Docket No. D2000.5.63 is closed.

DONE AND DATED this 16th day of March, 2006 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
GREG JERGESON, Chairman

_____
BRAD MOLNAR, Vice-Chairman

_____
BOB RANEY, Commissioner

_____
THOMAS J. SCHNEIDER, Commissioner

_____
DOUG MOOD, Commissioner

ATTEST:

Commission Secretary

(SEAL)

Telephone Company (Ronan) on November 23, 1998. Blackfoot sought to establish a reciprocal compensation agreement under 47 U.S.C. § 251(b)(5) with Ronan. Ronan refused to negotiate with Blackfoot to establish an agreement. On April 27, 1999, Ronan filed an application with the Montana Public Service Commission (PSC or Commission), requesting that the provisions of 47 U.S.C. § 251(b), which set forth the obligations of a local exchange carrier to interconnect, be suspended with respect to Ronan.[2] Ronan claimed that it was exempt from the interconnection obligations of § 251(b) by application of the rural exemption provision contained in 47 U.S.C. § 251(f)(2). One day later, Blackfoot and MWI petitioned for arbitration under 47 U.S.C. § 252, asking the Commission to arbitrate Blackfoot and MWI's request for a reciprocal compensation agreement with Ronan.[3] The Commission denied Ronan's application to suspend the interconnection obligations of § 251(b), and that docket was closed.[4]

3. In the arbitration proceeding, Ronan filed a motion to dismiss the proceeding, arguing that 47 U.S.C. § 251(f)(1)(A) exempted it from negotiating a reciprocal compensation arrangement with Blackfoot or MWI, unless that exemption was terminated pursuant to 47 U.S.C. § 251(f)(1)(B). Although Ronan took the position that it had no obligation to arbitrate or negotiate a reciprocal compensation arrangement, it conceded that it has a duty under 47 U.S.C. § 252(b)(5) to provide reciprocal compensation arrangements upon request. The Commission dismissed the arbitration, concluding that 47 U.S.C. § 252(a) and (b) require a party to negotiate prior to arbitration. Ronan's exempt status under 47 U.S.C. § 251(f)(1)(A) allowed Ronan to avoid negotiation, and the Commission could not arbitrate until negotiation had occurred. Therefore the arbitration was dismissed.[5]

4. Although the Commission granted Ronan's motion to dismiss the arbitration proceeding, Ronan nevertheless had a duty to establish reciprocal compensation arrangements for carriers requesting such an arrangement.[6] Ronan conceded it had such an obligation.[7] In order to implement the interconnection obligations imposed by the 1996 Act, the commission directed Ronan to file a tariff, providing the details of a reciprocal compensation arrangement that would be available

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[2] Docket No. D99.4.111, filed April 27, 1999.
[3] Dockets No. D99.4.112 and D99.2.113.
[4] Docket No. D99.4.111, Order 6174e.
[5] Docket No. D99.4.112, Order No. 6218a; Docket No. D99.4.113, Order No. 6219a.
[6] 47 U.S.C. § 251 (b)(5), § 69-3-834(2)(b), MCA, Commission Order Nos. 6219a and 6219b, Conclusions of Law, paragraph 5.
[7] Ronan Motion to Dismiss, Docket Nos. D99.4.112 and D99.4.113, p.4, fn. 3, December 22, 1999.

to interconnecting carriers desiring such an arrangement.[8] The Commission directed Ronan to file a tariff by February 8, 2000, that complied with FCC rules on reciprocal compensation, 47 C.F.R. § 51.701 – 51.717.

5. Ronan filed a tariff on February 8, 2000, pursuant to 69-3-810, MCA, and noticed the application pursuant to PSC rules. Comments were received and the tariff filing was suspended pending a full contested case hearing.[9] The Montana Consumer Counsel (MCC), CenturyTel of Montana, Inc. (CenturyTel), and Montana Wireless, Inc. (MWI) intervened as parties in the docket. After discovery began, the Commission issued an Order clarifying the purpose of the tariff filing. "This docket is, in effect, a substitute for arbitration proceedings to determine the rates, terms and conditions of reciprocal compensation for interconnection with RTC."[10] An interim bill and keep arrangement was established between MWI and Ronan, subject to true-up, pending hearing and final decision on the reciprocal compensation tariff filing.[11] On August 31, 2000, a hearing was held before Commissioners Anderson, Feland and Rowe. Ronan requested that the decision in this docket be made by all five commissioners, and that request was granted.[12] The briefing in the docket was completed on November 20, 2000.

6. During this same time period, separate dockets involving litigation between Ronan and Blackfoot were initiated at the PSC.[13] Although unrelated to the issues contained in D2000.1.14, the issues raised in those dockets (D2000.2.27 and D2000.5.63) were complex, and bore on the parties' willingness to settle amicably the interconnection dispute contained in D2000.1.14. On February 27, 2002, a motion to dismiss filed by Blackfoot in D2000.5.63 was denied, and D2000.2.27 and D2000.5.63 were consolidated (D2000.2.27 dismissed and closed), and a procedural schedule entered. During the spring of 2002, continuances of the procedural schedule

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[8] Order No. 6225, Docket No. D2000.1.14.
[9] Notice of Application, Service Date March 3, 2000, Docket No. D2000.1.14.
[10] Order No. 6225c, Docket No. D2000.1.14, pp. 1-2.
[11] Order No. 6226d, Docket No. D2000.1.14, service date June 1, 2000; also Order No. 6225f, Docket No. D2000.1.14, service date July 19, 2000.
[12] Notice of Commission Action, service date January 31, 2001, Docket No. D2000.1.14.
[13] D2000.2.27, filed in February of 2000, involved allegations about internet provision in schools; and D2000.5.63, filed in May of 2000, involved allegations of misuse of universal service funds.

were requested and granted pursuant to the parties' representations that settlement negotiations were pending.[14]

**Pending Dockets Before the Commission**

7. On July 12, 2002, Blackfoot and Ronan filed a Settlement Agreement in Dockets No. D2000.1.14 and D2000.5.63, requesting Commission approval of the agreement and indicating that a compliance tariff would be filed upon approval of the agreement. The agreement was not served on MCC and CenturyTel, also parties in D2000.1.14.[15] On October 29, 2002, the Commission conditionally approved the settlement agreement. The Commission's approval was conditioned on: subsequent approval, after notice and an opportunity to comment period, of a compliance tariff; the requirement that any governing statute, administrative rule or PSC Order would control the issues presented in this settlement agreement rather than the terms of the agreement; and clarification that the commission was not, in conditionally approving the agreement, authorizing or approving of any waiver of legal rights and obligations.

8. Ronan and Blackfoot filed their compliance tariff as required on November 14, 2002. On December 4, 2002, a Notice of Opportunity to Comment was issued, seeking comments on the settlement agreement from interested persons and parties.[16] Comments were received from the MCC and from Qwest Corporation. Ronan objected to the comments of Qwest on the grounds that allowing comments from Qwest was the equivalent of allowing Qwest late intervention as a party in the docket. Ronan's objection was denied. The comments of Qwest and MCC shall be considered in the commission's decision on the settlement agreement.[17] Due to a change in commissioners as a result of the 2002 elections, a quorum of commissioners having heard the August, 2000 proceeding was no longer available. Consequently, Commissioner Rowe was appointed hearings examiner for purposes of issuing a proposed order on the settlement agreement.[18] On February 3, 2003, all parties in the docket filed a Waiver of Proposed Order as permitted by Section 2-4-622(2), MCA. The

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[14] See Motion for Continuance, filed May 17, 2002 by Ronan, in D2000.5.63.
[15] See "Ronan-Blackfoot Settlement Agreement, Dockets No. D2000.1.14 and D2000.5.63," filed July 12, 2002.
[16] Notice of Opportunity to Comment, filed on December 4, 2002.
[17] Notice of Commission Action, filed January 27, 2002.
[18] Notice of Commission Action, filed January 6, 2003.

Commission accepted the parties' Waivers and acted to issue a Final Order in this docket as requested by the parties.

9. The Commission must decide whether or not to approve or reject the settlement agreement, or whether or not to approve parts of the agreement while rejecting other parts. Approval or rejection of the agreement will turn in part on the level of review that is required. The appropriate level of review is determined by a finding as to whether the agreement between Ronan and Blackfoot is a negotiated interconnection agreement or an arbitrated interconnection agreement. 47 U.S.C. § 252(e)(2).

**The Settlement Agreement is a Negotiated Interconnection Agreement**

10. The settlement agreement purports to resolve issues contained in Docket No. D2000.1.14. Ronan and Blackfoot, in the settlement, agree to adopt the tariff filed on February 8, 2000 as filed, to forego any objections that might be raised to the tariff, and to extend it for a period of five years. The tariff filed on February 8, 2000, was Ronan's response to commission direction to file a tariff that complied with FCC rules on reciprocal compensation, 47 C.F.R. § 51.701 – 51.717 and that would, in effect, be a substitute for arbitration proceedings to determine the rates, terms and conditions of reciprocal compensation upon which another carrier could interconnect with Ronan. That direction was necessary because Ronan had invoked the rural exemption provision of 47 U.S.C. § (f), but was obligated to interconnect as provided in § 251(b). Requiring a tariff filing was a mechanism that allowed the commission, through a contested case, to establish terms and conditions for interconnection. The tariff filing, as a contested case proceeding, was no different than an arbitrated interconnection agreement, except that there were parties to the case (CenturyTel and MCC), one of which (CenturyTel) would not have been allowed to participate had the proceeding remained titled an "arbitration." Section 69-3-837(7), MCA and 47 U.S.C. § 252(b).

11. After the hearing on the tariff filing in August of 2000, Ronan and Blackfoot negotiated and entered into an agreement that allowed Blackfoot to interconnect with Ronan, which they filed with the commission for approval on July 12, 2002. Ronan and Blackfoot, in entering into the settlement agreement, negotiated an interconnection agreement. The settlement agreement is a negotiated agreement that authorizes terms and conditions for interconnection. Responding to comments on the agreement, Ronan argues that "[t]hese rates constitute a negotiated arms-length

compromise of disputed issues between two very contentious parties, and the compromised rates are fully supported by the law and the record"[19] and that "[t]he rates in the Tariff are obviously a negotiated compromise between Blackfoot and RTC, to which they both have been able to agree."[20]

12. This proceeding began as an arbitrated interconnection agreement. It became a contested case tariff proceeding in order to allow Ronan it's claimed exemption under 47 U.S.C. § 251(f), and to entitle Blackfoot to interconnect as required by 47 U.S.C. § 251(b). This proceeding has concluded as a negotiated interconnection agreement with the settlement agreement filed with the commission on July 12, 2002.

13. In reaching their agreement, Ronan and Blackfoot did not include two parties in the negotiations: CenturyTel and the MCC. In addition, Ronan and Blackfoot failed to serve copies of the negotiated agreement on CenturyTel and the MCC. Consequently, the MCC and CenturyTel did not have notice that the agreement between Blackfoot and Ronan had been negotiated until the commission issued its Notice of Opportunity to Comment on December 4, 2002.

## **Legal Standard: Level of Review by the Commission**

14. An interconnection agreement, whether it is negotiated or arbitrated, is required to be submitted to the State commission for review. 47 U.S.C. § 252(e)(1). The standards for approving an interconnection agreement differ, depending on whether the agreement has been voluntarily negotiated or has been arbitrated by a state commission. 47 U.S.C. § 252(e)(2). The Agreement submitted for approval in this proceeding was negotiated voluntarily by the parties and thus must be reviewed according to the provisions in 47 U.S.C. § 252(e)(2)(A).

15. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by voluntary negotiation:

> (2) GROUNDS FOR REJECTION. – The State commission may only reject –
>
> (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that

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[19] Ronan Telephone Company Response to Comments, filed on December 30, 2002, in Dockets No. D2000.1.14 and D2000.5.63, p. 6, ll. 11 – 13 (internal footnote omitted).
[20] Id. at page 12, lines 16-17.

> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity[.]

16. Notwithstanding the limited grounds for rejection in 47 U.S.C. § 252(e)(2)(A), the Commission's authority is preserved in § 252(e)(3) to establish or enforce other requirements of Montana law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to § 253 of the 1996 Act, which does not permit states to impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

17. Unlike an agreement reached through arbitration, a voluntarily negotiated agreement need not comply with standards set forth in §§ 251(b) and (c). 47 U.S.C. §§ 251(b), 252(c) and 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection even though they may not meet the just, reasonable and nondiscriminatory standard and even if they are using pricing standards other than those included in § 252(c) of the Act. The "just, reasonable and nondiscriminatory" standard and pricing standards in § 252(c) would be required in the case of arbitrated rates set by the Commission.

18. Comments from the MCC and from Qwest[21] indicate that the agreement, as specifically discussed below, does not comply with federal law or with state telecommunications requirements, and that it is not consistent with the public interest, convenience and necessity.

## **Analysis of Ronan – Blackfoot Interconnection Agreement**

19. The MCC's comments address five separate issues and briefly respond to questions the Commission raised. The MCC's initial comments include the following.

[21] For extent of Commission consideration of comments of Qwest, not a party to this docket, see Notice of Commission Action, dated January 27, 2003, Docket Nos. D2000.1.14 and D2000.5.63.

20. In comments on the geographic scope of local wireless calls, the MCC asserts that the proposed settlement agreement and compliance tariff attempt to limit the wireless traffic included as local traffic. Sections II.D, II. K and III. J, limit local traffic to an area less than the entire Major Trading Area (MTA).[22] This limitation, however, ignores the FCC's rules (§51, Subpart H, Title 47). MCC concludes that parties cannot by agreement change the FCC rule in a way that contradicts the rule.

21. On the issue of cost-based reciprocal compensation rates, the MCC asserts that the FCC's rules require reciprocal compensation rates to be determined and structured consistent with cost incurrence. If either the default proxy or the bill-and-keep alternative is not used, then rates must be based on Ronan's own costs. MCC holds the $.045 rate in the RTC and Blackfoot settlement is arbitrary, having no apparent cost basis. Additionally, the basis of the $.08837 rate RTC filed in the case is highly flawed. The MCC advises the Commission to reject the rate.

22. The MCC explains when the FCC's rules require symmetrical reciprocal compensation rates. Rates must be symmetrical unless a CLEC (competitive local exchange carrier) can prove a higher rate for the LEC (local exchange carrier). That is, the rate should be the same in both directions.

23. Because the settlement agreement and the compliance tariff force rates on all CLECs that might want to enter Ronan's service area the MCC also argues that the agreement and tariff are not in the public interest and should be rejected. MCC doubts that any (other) competitor would enter Ronan's market if the settlement agreement is accepted. The MCC concludes that the proposed settlement and compliance tariff rates violate FCC rules and should be rejected.

24. The MCC believes that the definition of local traffic in the settlement agreement and the compliance tariff appears unlawful. It appears unlawful because it makes transit carriers liable

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[22] Per Section II. D., local telecommunications service includes telephone calls which originate and terminate within the wireline service area of RTC consisting of the communities of RTC and Pablo, except as otherwise excluded in this tariff; wireless CMRS traffic is limited to the geographic calling areas specified in this tariff; and it excludes all other telecommunications traffic excluded in Section III. J. or by other tariff provisions. Section III. J provides, in part, that the following services will not be provided: inter-MTA traffic and traffic otherwise excluded by terms of the tariff.

for compensation that should be the responsibility of the calling party's network.[23] The MCC notes this Commission previously held that a carrier who transports third-party traffic has no obligation to compensate the terminating carrier under § 252(d)(2)(A) of the 1996 Act (see Docket No. D96.9.150, Order No. 5949b, Findings 32-33). MCC concludes that this is another reason to reject both the settlement and compliance tariff.

25. Except for limited responses to the Commission's questions, Qwest's comments focus on the transit traffic issue. Qwest's comments buttress the transit traffic concern raised by the MCC.

26. The Commission finds that with some revisions the July 12, 2002 settlement agreement filed by Ronan and Blackfoot may be approved as a compliant negotiated interconnection agreement. The Commission's main concern is the settlement agreement's applicability to "any and all" carriers. The price term could be approved if the settlement agreement were confined to RTC and BFT, and assuming that the agreement is a negotiated agreement per § 252 of the 1996 Act. The geographic scope of calling areas could also be approved if the agreement were limited to RTC and BFT. These issues appear resolvable if the interconnection agreement is not applicable to "any and all" carriers. The transit traffic issue, however, differs. In order to gain the Commission's approval, the settlement agreement must be revised to not assess carrier access charges on all terminating traffic not subject to reciprocal compensation. If the parties agree to revise to limit this negotiated interconnection agreement to just RTC and BFT, then the Commission may approve the agreement as satisfying the 1996 Act's standard of review.

## **Findings of Fact**

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[23] Section II. E. of RTC's tariff provides: Transit traffic: Local traffic delivered to RTC's network pursuant to this schedule by a CLP for termination to a RTC end user that originates from an end user served by any carrier other than the CLP, or is carried in part by an carrier other than the CLP who ordered this service. Traffic originating from an end user served by an affiliate of a CLP or originated from or transited through the network(s) of an affiliate of the CLP shall also be deemed transiting traffic. Transiting traffic also includes local traffic originating from RTC end users that transits the CLP network and terminates to end users served by any carrier other than the CLP who ordered this service or is carried in any part by a carrier other than the CLP Traffic terminating to end users served by an affiliate of a CLP or transited through the network(s) of the affiliate of the CLP to end users served by any other carrier shall also be deemed transiting traffic. RTC's tariff at Section III. J. 14, states that the Company will not provide DS1 Local Transport and Termination Service for Transit Traffic; and Section III. K. states that the services listed "above" (an apparent reference to Section III. J.) will be provided pursuant to RTC's Access Service Tariff.

27. The Commission's analysis and findings are structured along the lines of the settlement agreement's structure and apply to associated sections in the compliance tariff.

28. Definitions: The Commission generally finds the definitions section to be reasonable. In regard to "transiting traffic" the Commission is unsure whether the definition is not discriminatory or in the public interest.

> Local traffic delivered to RTC's network pursuant to this tariff by a CLP (Competing Local Provider) for termination to a RTC end user that originates from or is carried in part by any carrier other than the CLP who ordered this service. Traffic originating from an affiliate of a CLP shall also be deemed transiting traffic. Transiting traffic also includes local traffic originating from RTC end users that transits the CLP network and terminates to any carrier other than the CLP who ordered this service or is carried in any part by a carrier other than the CLP. Traffic terminating to an affiliate of a CLP shall also be deemed transiting traffic.

The Commission's concern with transiting traffic is more fully addressed in response to Section 3 below. As there is no definition provided in this agreement, a definition for "CLP" must be included.

29. Section 1: The Agreement provides for asymmetric reciprocal-compensation rates for any and all wireline and wireless carriers for the exchange of local traffic. In regard to these rates it also allows RTC and BFT to not concede to or accept any rate-making methodology. BFT agrees to drop all objections to the PSC's approval of the amended tariff and supports PSC approval of same. RTC's agreement is contingent on the PSC's unaltered approval of the amended tariff; both RTC or BFT have 30 days from a Commission final order to elect to withdraw from the agreement if altered (except as otherwise amended by this Agreement the approved tariff should be the tariff as filed by RTC on February 8, 2000). The Commission finds that in order to approve this section it must be altered slightly to be in the public interest; the agreement must be altered to apply to just the two parties -- Ronan and Blackfoot. As it is written this section is rejected.

30. Section 2: During the 5-year term of this agreement the parties agree not to seek amendments to this agreed to tariff – except as end-user charges may be allowed by Section 7. The Commission finds this section, if applied to Ronan and Blackfoot only, to be reasonable.

31. Section 3: This section establishes the conditions and then circumscribes the types of traffic that qualify for reciprocal compensation or that are subject to access charges. The Commission finds two necessary revisions. First, the Commission has concern with how the agreement charges for transit traffic. The commission notes the above comment on the definition of

such traffic and defers to Section 6 below a full discussion on the revision. Second, whereas the "interconnection arrangement" excludes ISP, internet and data traffic, the Commission finds that it is not in the public interest to exclude data traffic. For example, if an end user on Ronan's system wishes to exchange data with an end user on the CLP's system, this section has the apparent effect of prohibiting such an exchange. As filed, such traffic would be subject to carrier access charges, and not reciprocal compensation. However, such traffic is local traffic, just not local voice traffic. This exclusion appears elsewhere in the settlement agreement. The Commission's finding here applies with the same force where the same exclusion appears elsewhere in the settlement agreement. As written, this Section is rejected.

32. Section 4: This section provides for auditing of Blackfoot traffic carried over Ronan's DS1 facilities. The Commission finds this provision reasonable for an agreement applied only to Ronan and Blackfoot, and approves this Section as it pertains to Ronan and Blackfoot.

33. Section 5: The parties waive rights to true-ups for any net reciprocal-compensation charges accruing until the Commission otherwise approves of the accompanying tariff. This section also applies to Ronan and Blackfoot only. The agreement to waive true-up charges is reasonable and this section is approved.

34. Section 6: This section provides, in part, for the applicable scope of reciprocal-compensation rates for traffic exchanged between Ronan and Blackfoot. Except as noted below, the Commission has no objection to including this section in an interconnection agreement between Ronan and Blackfoot. The Commission has two concerns. First, this section provides for carrier access charges as the rates charged for "[a]ll other traffic not described above, or not included as reciprocal compensation in the tariff…." This provision, in combination with its applicability to "any and all wireline and wireless carriers" (Section 1), appears, in part, the foundation for the transit traffic issue raised in MCC's comments and as discussed by Qwest. The agreement must be altered to clearly establish that carrier access charges will not apply to transit traffic carried by Qwest or other similarly situated providers of transit traffic service. Such an amendment should address any unintended consequence, real or perceived, of applying carrier access charges to transit traffic. As it is written, this Section is rejected. Second, the Commission again notes that section 6 imposes a restriction on the transmission of data in addition to internet traffic. The Commission's concern with the settlement agreement's blocking of data traffic is addressed in Section 3 above.

35. Section 7: Unless requested by the Commission, and based on reciprocal compensation charges resulting from this agreement's tariff, each party agrees not to object to the other party's initiation of a proceeding that imposes end-user charges on its own subscribers. The Commission finds this section reasonable for an interconnection agreement between Ronan and Blackfoot, and approves this Section.

36. Section 8: This section discusses the legal relation of this docket to the status and procedures associated with Dockets No. D2000.5.63 and D2000.2.27. This Section is approved with respect to Docket No. D2000.5.63. Docket No. D2000.5.63 is dismissed. The second cause of action Docket No. D2000.2.27 it is dismissed without prejudice, and is closed with respect to this proceeding.

37. Section 9: This section explains, in part, what traffic between MWI and Ronan can be carried over an existing trunk group and when MWI may order additional circuit capacity. The Commission finds this section reasonable for an interconnection agreement between Ronan and Blackfoot, and approves this Section.

38. Section 10: This section regards the legal relationship between this agreement and the D2000.5.63 "Cause of Action." In the context of a subsidy discussion, the agreement addresses the potential cross subsidization of investments by placing conditions on facility and service expansions and then relates these conditions to the legal "Second Cause of Action" in D2000.2.27, which is to be separated from D2000.5.63. The Commission is uncertain about the consequences of one sentence in this section. It reads:

> If either party expands its voice services or facilities beyond what each is currently providing in the other's service area, either by adding new types of voice service or voice facilities or expanding the geographic area in which voice service or voice facilities are provided within the other party's service area, then the other party shall have the right to pursue any and all legal remedies which are available to it, including but not limited to a complaint for misuse of subsidies, illegal cross-subsidy of competitive services, and/or anti-competitive conduct (including for example, re-filing the Complaint being dismissed in Docket No D2000.5.63).

The Commission's concern is that, as with other aspects of this settlement agreement, the implications of this provision are uncertain. It is unclear, for example, what all limitations are contemplated by "expanded voice services offering" and "voice facilities and by expanding the geographic areas." Clearly this section like many others is not meant at all to be generic but rather

constraining on the parties, Ronan and Blackfoot. As applied to Ronan and Blackfoot only this section is approved, subject to the terms of paragraph 35 above, dismissing Docket Nos. D2000.5.63 and D2000.2.27.

39. Section 11: The 833 nxx local, geographic, calling area is to be frozen for five years but an additional nxx may be requested by MWI within the same area. The Commission does not find this an unreasonable for an agreement between Ronan and Blackfoot. If applied to Ronan and Blackfoot only, it is acceptable.

40. Section 12: Since Blackfoot, CFT and Ronan are rural companies under § 251(f)(1), neither line sharing, nor the purchase/use of UNEs combined to provide the equivalent of line sharing, is required. And, for five years no party will seek or request to lift the rural exemption pursuant to 47 U.S.C. § 251(f)(1)(A) or (B). This Section is approved to the extent it binds Ronan and Blackfoot only.

41. Section 13: This section concerns Docket No. D2002.3.33. RTC agrees to limit any comments filed with the Commission to ones that support general goals of the NOI that protect against the misuse of subsidies and serve to maintain a level competitive playing field. The Commission finds an agreement limiting participation in pending dockets as contrary to the public interest and this Section is rejected.

42. Sections 14 through 18: The provisions in these sections appear, for the most part, contractual obligations imposed on Ronan and Blackfoot. The Commission finds these provisions reasonable as applied to Ronan and Blackfoot only.

## Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Ronan is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to review interconnection agreements. 47 U.S.C. § 252(e)(1).

3. The settlement agreement filed on July 12, 2002 is a negotiated interconnection agreement.

4. The Commission may only reject a negotiated agreement if: (a) it discriminates

against a nonparty to the agreement (47 U.S.C. § 252(e)(2)(A)); or (b) it is not consistent with the public interest, convenience and necessity.

5. The Commission may reject a portion of a negotiated agreement and approve the remainder of the agreement if such action is consistent with the public interest, convenience and necessity and does not discriminate against a carrier not a party to the agreement. 47 U.S.C. § 252(e)(2)(A).

## Order

THEREFORE, based upon the foregoing, it is ORDERED that the agreement of the parties submitted to this Commission for approval pursuant to the 1996 Act is approved subject to the following condition:

The parties shall have 30 days to file amendments to bring their agreement into compliance with the Commission's decision.

IT IS FURTHER ordered that Docket No. D2000.5.63 is closed.

DONE AND DATED this 5th day of February, 2003 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ROWE, Chairman

_____
THOMAS J. SCHNEIDER, Vice Chairman

_____
MATT BRAINARD, Commissioner

_____
GREG JERGESON, Commissioner

_____
JAY STOVALL, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.