

Service Date: April 14, 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)	
By Ronan Telephone Company Containing)	UTILITY DIVISION
The Rates, Terms and Conditions for)	
Reciprocal Compensation Pursuant to)	DOCKET NO. D2000.1.14
47 U.S.C. § 251(b)(5) and § 69-3-834(2), MCA.)	ORDER NO. 6225i

**ORDER ON MOTION FOR RECONSIDERATION
AND PENDING MOTIONS**

Introduction

1. On February 12, 2003, the Montana Public Service Commission (Commission) entered Order No. 6225g in this docket, a Final Order approving the interconnection agreement filed by Ronan and Blackfoot with the Commission. The Commission's approval was subject to the parties filing amendments within thirty days to bring the agreement into compliance with Order No. 6225g.

2. Ronan and Blackfoot Telephone Cooperative filed a Joint Motion for reconsideration ("Joint Motion for Clarification and Reconsideration by Ronan Telephone Company, Blackfoot Telephone Cooperative, and Montana Wireless, Inc."). In addition, Ronan filed a Motion for Clarification and Amendment of Order No. 6225g. Qwest filed a Petition to Intervene and a Response to the Motion for Clarification. Ronan filed a Motion for Summary Denial of Qwest's Petition and a Motion to Strike Qwest's Response. MCC filed comments on the Joint Motion for Reconsideration and Ronan and CenturyTel filed replies to MCC's comments.

3. In Order No. 6225g the Commission held that the settlement agreement filed on July 12, 2002, re-filed on November 14, 2002 along with the document titled "DS1 Local Transport and Termination Service," is a negotiated interconnection agreement, and approved the agreement in part and rejected it in part, providing the parties 30 days to file amendments to bring their agreement into compliance with the Commission's decision.

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)	UTILITY DIVISION
The Rates, Terms and Conditions for)	
Reciprocal Compensation Pursuant to)	DOCKET NO. D2000.1.14
47 U.S.C. § 251(b)(5) and)	REVISED ORDER NO. 6225i
§ 69-3-834(2), MCA.)	

**REVISED ORDER ON MOTION FOR RECONSIDERATION
AND PENDING MOTIONS***

Introduction

1. On February 12, 2003, the Montana Public Service Commission (Commission) entered Order No. 6225g in this docket, a Final Order approving the interconnection agreement filed by Ronan and Blackfoot with the Commission. The Commission's approval was subject to the parties filing amendments within thirty days to bring the agreement into compliance with Order No. 6225g.
2. Ronan and Blackfoot Telephone Cooperative filed a Joint Motion for reconsideration ("Joint Motion for Clarification and Reconsideration by Ronan

* 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.

Telephone Company, Blackfoot Telephone Cooperative, and Montana Wireless, Inc.”). In addition, Ronan filed a Motion for Clarification and Amendment of Order No. 6225g. Qwest filed a Petition to Intervene and a Response to the Motion for Clarification. Ronan filed a Motion for Summary Denial of Qwest’s Petition and a Motion to Strike Qwest’s Response. MCC filed comments on the Joint Motion for Reconsideration and Ronan and CenturyTel filed replies to MCC’s comments.

3. In Order No. 6225g the Commission held that the settlement agreement filed on July 12, 2002, re-filed on November 14, 2002 along with the document titled “DS1 Local Transport and Termination Service,” is a negotiated interconnection agreement, and approved the agreement in part and rejected it in part, providing the parties 30 days to file amendments to bring their agreement into compliance with the Commission's decision.

4. In the Joint Motion for Reconsideration Ronan and Blackfoot filed two attachments that contain amendatory language to the interconnection agreement, attachment “A” and attachment “B.”

5. The proposed amendments, the motion for reconsideration, and the other motions filed since Order No. 6225g was entered are addressed below. This order addresses the issues presented in the following manner: motion for reconsideration, proposed amendments and other matters.

Findings of Fact
Motion for Reconsideration

6. In the motions for reconsideration and clarification and the responses thereto filed after the Commission issued its Final Order No. 6225g, several issues were raised, which are addressed below.

Applicability of Ronan and Blackfoot's Interconnection Agreement to "any and all wireline and wireless carriers."

7. Ronan and Blackfoot suggest they can comply with the Commission's final order by amending the interconnection agreement to expressly limit its application solely to Ronan and Blackfoot. This proposed amendment misconstrues the Commission's direction in Order No. 6225g. The Commission rejected the agreement's applicability to "any and all" carriers. The Commission stated that for the agreement to be approved, it "must be altered to apply to just the two parties – Ronan and Blackfoot." (Paragraph 29, Order No. 6225g.) To the extent the agreement precludes other carriers from interconnecting with Ronan on the same terms as those provided to Blackfoot it is rejected. Ronan and Blackfoot may not by this agreement bind any other carrier to its terms and conditions. It is an interconnection agreement between Blackfoot and Ronan only, and the Commission in Order No. 6225g rejected the attempt by Ronan and Blackfoot to bind "any and all carriers" to the terms of this agreement. The Commission also

rejects any attempt by Ronan and Blackfoot to preclude other carriers accessing the terms and conditions available to Blackfoot in this agreement.

Most favored Nation Clause.

8. As discussed in paragraph ~~33~~ 14 below, this language is ~~approved~~ with the modification required. rejected.

Rural Exemption.

9. In Order No. 6225g, the Commission approved Section 12 of the interconnection agreement that addressed Blackfoot's and Ronan's mutual agreement to leave the rural exemption contained in 47 U.S.C. § 251(f)(1)(A) or (B) in place with respect to each other without challenge for five years. In the Joint Motion for Reconsideration, Ronan and Blackfoot argue that Ronan made no implied or voluntary waiver of its rights under 251(f)(1). The MCC responded in its comments that the Commission should reject Ronan's suggestion that it has not waived its rural exemption. The MCC argues that because Ronan voluntarily negotiated an interconnection agreement with Blackfoot, any claim of exemption is moot. In its reply to the MCC's comments, Ronan argues that it has never taken any action inconsistent with its rural exemption. CenturyTel filed comments for the first time in this proceeding in response to this issue, arguing that when a rural company fulfills its obligations under 251(b) of the Act it cannot thereby be deemed to have waived its exemption from obligations contained in Section 251(c)

of the Act. Because the parties submitted a negotiated interconnection agreement for approval, the issue of whether there was any waiver of the rural exemption by RTC is moot for purposes of this Docket.

~~10. The Commission set forth in paragraphs 2 through 5 of Order No. 6225g the history that gives rise to this argument. That history shall not be repeated here. Relevant to the arguments presented here is the fact that Ronan invoked its rural exemption in this case to avoid arbitrating an interconnection agreement with Blackfoot before the Commission. The Commission found that Ronan's exempt status under 47 U.S.C. § 251(f)(1)(A) allowed Ronan to avoid negotiation, and the Commission could not arbitrate an agreement that had not first been negotiated. Ronan conceded however that it had an obligation to provide interconnection arrangements to carriers so requesting. (See paragraph 4 of Order No. 6225g and footnotes thereto.) It is disingenuous for Ronan to argue now that the Commission ordered Ronan to file a tariff to establish reciprocal compensation arrangements that would be available to Blackfoot, and although Ronan complied with that order, it "has never taken any action inconsistent with its rural exemption." The Commission's direction to Ronan to file a tariff providing terms and conditions upon which Blackfoot, or any other carrier, could do business with it was a necessary procedural mechanism to implement an obligation Ronan acknowledged it had. The need for that procedural device was created by Ronan's~~

~~own efforts to avoid dealing with Blackfoot. Ronan was not merely complying with Commission direction; it was bound by statute to provide terms and conditions for interconnection agreements. 47 U.S.C. § 251(b). Ronan conceded that the rural exemption protection contained in 251(f) did not protect it from interconnecting with other carriers as required by 251(b), and CenturyTel also acknowledges that obligation. In arguing that it has not waived its rural exemption by having negotiated an interconnection agreement with Blackfoot (see paragraphs 10 through 13 of Order No. 6225g), Ronan attempts to use the rural exemption contained in 251(f)(1) as a shield and a sword. Ronan can't have it both ways. The rural exemption allowed Ronan to avoid *arbitrating* an interconnection agreement with Blackfoot, because Ronan was not first obligated to negotiate and arbitration cannot occur without negotiation first taking place. Ronan then in fact negotiated an interconnection agreement with Blackfoot. Here, Ronan invoked the rural exemption shield to avoid arbitration, but then entered into negotiations in spite of the protection afforded by the rural exemption.~~

11. ~~With respect to the very narrow issue of whether a party can invoke the rural exemption to avoid arbitration of an interconnection agreement, then in fact negotiate an agreement, and then claim that the rural exemption still applies as to that situation, the Commission rejects this result. In negotiating the interconnection agreement with Blackfoot, the Commission finds that Ronan~~

~~waived its rural exemption *to the extent that it was invoked* to protect Ronan from arbitrating an interconnection agreement before the Commission. This point is moot for purposes of this docket however since the parties have submitted their negotiated agreement for approval. Had Blackfoot asked for arbitration of this agreement after the negotiations had taken place, the rural exemption could no longer provide a shield for Ronan. The Commission does not address the issues presented by CenturyTel because they are not applicable to this case. The Commission has made no determination about the scope of the rural exemption with respect to its invocation and waiver outside the issue presented in this docket. In this case, the Commission finds that a party may not use the rural exemption to avoid arbitration, then negotiate an interconnection agreement, and retain the cloak of the rural exemption as a protective device. This kind of procedural sleight of hand extends the time for resolution of cases pending before the Commission, wastes time and resources, and achieves nothing. The purpose of the Act is frustrated by this kind of posturing, and the Commission notes that it has not served any of the parties in this docket well.~~

Negotiated Interconnection Agreement as Opposed to a Tariff.

12. 10. ~~In the Joint Motion for reconsideration Ronan and Blackfoot object to the characterization of their agreement as a negotiated interconnection agreement, because that may allow an interpretation that Ronan waived its rural~~

~~exemption.~~ Ronan and Blackfoot do not object to the review applied by the Commission to this agreement as a negotiated interconnection agreement, and in reply to the MCC state that the Commission's approach to the agreement is appreciated "for the purpose of applying a different standard of review pursuant to 47 U.S.C. § 252(e)(2)(A)." The MCC argues that the Commission can only approve the price terms contained in the agreement if it is a negotiated interconnection agreement, because the price terms do not comply with the rules of the Federal Communications Commission (FCC) on costs or default proxy rates. The MCC points out that if the agreement is a tariff applicable to all carriers, then the tariff must comply with FCC rules, which would require Ronan to produce its costs, since Ronan has opposed the other two alternative methods of complying with FCC rules on reciprocal compensation rates. ~~Ronan objects to the characterization of the agreement as a negotiated interconnection agreement because of the potential implications on the rural exemption issue.~~

~~13. 11. The Commission has addressed the rural exemption issue.~~

With respect to characterizing the agreement as a negotiated interconnection agreement, the Commission rejects Ronan's assertion that the characterization was simply for the purposes of applying a certain standard of review. The Commission set forth in paragraphs 10 through 13 of Order No. 6225g its analysis of this agreement as an interconnection agreement. Once the Commission concluded that

the agreement was a negotiated interconnection agreement, the standard of review was applied as required by 47 U.S.C. § 252(e). Contrary to Ronan's interpretation, the Commission did not "characterize" the agreement as a negotiated interconnection agreement for purposes of applying a certain level of review. The Commission analyzed the facts and history of this docket, the agreement that was presented to it for review, and concluded that based on the law and the facts this agreement is a negotiated interconnection agreement. The applicable standard of review flows from that determination; not as Ronan indicates the other way around. The Commission rejects Ronan's request in its reply to the MCC's comments to approve this agreement as a reciprocal compensation Tariff. The Commission stands by its analysis set forth in Order No. 6225g and concludes that the agreement presented by Ronan and Blackfoot is a negotiated interconnection agreement.

Transiting Traffic.

~~14. In its motion for clarification, Ronan asks that the Commission amend paragraph 34 of Order No. 6225g to state that the Commission does not intend to express any opinion or conclusion that might be interpreted to apply to that issue U.S. District Court. Ronan reiterated this point in its reply brief, asking that the Commission add language to its order making it clear that the Commission is not expressing a conclusion or opinion regarding Qwest's responsibility for~~

~~terminating access charges for terminating traffic over long distance trunks. No party responded to this issue. The Commission rejects Ronan's request. Order No. 6225g sets forth the Commission's decision on review of an interconnection agreement between Blackfoot and Ronan in which the Commission approved and rejected the terms of the agreement as required by statute. 47 U.S.C. § 252(e). The Commission's analysis of the agreement and subsequent rejection or approval of its terms and conditions may be read and argued by the parties as and where they deem fit. This Commission refrains from instructing another tribunal as to the applicability of its conclusions and analysis. Additionally, it is inappropriate for this Commission to provide one party a security blanket it can attempt to use to protect its interests elsewhere. The procedural posture and substantive issues in this docket are unique to the agreement presented by Ronan and Blackfoot for review by this Commission. The Commission has reviewed the agreement and made a decision about the issues presented in that agreement. Paragraphs 26 and 34 in Order No. 6225g stand as written.~~

15.—~~The issue of transit traffic arose in Ronan's February 8, 2000 Application for Approval of Detariffed New Service—DS1 Local Transport and Termination Service. That Application defines transit traffic in relation to certain kinds of local traffic. There is no other definition of transit traffic in the Application. The Application asserts that testimony will be filed in support of the~~

~~Application. Ronan's February 10, 2000 Direct Testimony of Gregory Widney in support of the application, however, is silent on the issue of transit traffic. The intervenor testimony of MCC and MWI is also silent on the subject of transit traffic. Ronan's and BFT's July 12, 2002 Settlement Agreement revises slightly the February 8, 2000 definition of transit traffic but still defines transit traffic as certain kinds of local traffic. Ronan's November 14, 2002 compliance tariff filing again revises the July 12, 2002 definition of transit traffic and continues to list (Schedule I. III. J 14) transit traffic as a service not provided with DS1 Service.~~

~~16. Final Order No. 6225g (Finding No. 34) provides the Commission's findings on the Settlement Agreement's transit traffic provision. The Commission's finding reads:~~

~~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.~~

~~17.— In response to Final Order No. 6225g, Ronan filed on March 7, 2003 a corrected Motion for Clarification and Amendment of Order. Ronan and Blackfoot also filed a Joint Motion for Clarification and Reconsideration. Each is summarized in turn. First, Ronan’s corrected Motion for Clarification and Amendment asserts that the above finding (No.34) inadvertently expresses a conclusion that might be interpreted to apply to a separate issue pending in Federal Court—that is not before the Commission in “this docket.” In its Motion for Clarification, Ronan, for the first time, distinguishes two types of transit traffic, the “Local Interconnection” and the “Long Distance” transit traffic. The Commission notes that, although the former (“Local Interconnection”) cites to the “RTC tariff at issue in this proceeding” the definition here is only with respect to wireline traffic and that this definition differs from the definition of transit traffic in the July 12, 2002 Settlement Agreement. It differs in several obvious respects. In its Motion for Clarification, Ronan asks the Commission to amend Finding No. 34 to clarify that the Long Distance Transiting Traffic is not an issue before the Commission in this Docket and that the Commission did not intend to express an opinion, or conclusion that might be interpreted to apply to the issue in the U.S. District Court.~~

~~18.— Second, the Joint Motion for Clarification and Reconsideration filed by Ronan, Blackfoot and Montana Wireless Inc. (hereafter “the parties”) includes Issue #2 Transiting Traffic. Among other points the Joint Motion for Clarification~~

~~and Reconsideration asserts: (1) that Finding No. 34 confuses two distinct types of transiting traffic by referring to transit traffic carried by Qwest or other providers; (2) that the Final Order is unclear because Qwest does not have nor does it seek any local interconnection with RTC and therefore could not possibly carry “transiting traffic” over such a connection; and (3) that the Telecommunications Act and the FCC’s rules do not include “third party” “transiting traffic” within local reciprocal compensation arrangements.~~

19.—~~The Joint Motion proposal prohibiting transit traffic from paying reciprocal compensation rates is based on technical and legal concerns including: (a) RTC cannot identify a “third party carrier” that originates traffic that transits another carrier’s network; (b) to allow transit traffic invites arbitrage by “third party” carriers that “could” attempt to route non local traffic, such as long distance, over the “local interconnection” to avoid relatively high carrier access charges and instead pay lower reciprocal compensation rates; (c) a host of legal problems such as a “third party” originating carrier that claims it did not order service from the carrier terminating its traffic; and (d) because Ronan lacks the capability to block traffic from a “third party,” it lacks the means to enforce payment from “third parties” for such traffic.~~

20.—~~The Joint Motion next maintains that the “transiting traffic at issue herein” should not be confused with the “Long Distance Transiting Traffic” issue.~~

~~The reason is that the issue “herein” regards traffic originating from “third parties” that “might” be routed over a local interconnect by “...’transiting’ the facilities of the local interconnecting carrier (i.e., Blackfoot herein)” whereas the “Long Distance Transiting Traffic” issue addresses the obligation of IXCs to compensate local carriers for “all” traffic routed by an IXC over long distance toll trunks. The Joint Motion asks that the Commission express no opinion or conclusion with regard to the latter, long distance, issue.~~

~~21.—The Joint Motion further asserts that the Qwest Western Wireless arbitration is irrelevant because transiting traffic for wireline terminating reciprocal compensation was not addressed in the order.~~

~~22.—Last, the Joint Motion asserts that this Commission has approved numerous interconnection agreements that contain language excluding transit traffic from local reciprocal compensation arrangements. The Joint Motion cites to the MWI-USWC (D97.9.168) case as one such instance. That agreement, in part reads that “Where either Party acts as an IntraLATA Toll provider or InterLATA Interexchange (IXC) or where either Party interconnects and delivers traffic to the other from third parties [i.e., “transit traffic”] each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs or contractual offerings for such third party terminations.” Qwest’s SGAT contains a related and slightly different provision.~~

~~23.—The Joint Motion concludes that for the above reasons, and because no party objected to or challenged the proposal to prohibit transit traffic, the Commission lacks any record upon which it can modify or reject the transit traffic provisions of the proposed tariff. Thus, as a matter of law the proposal must be approved.~~

~~24.—Subsequent to the filing of the above discussed motions others filed comments or reply comments. First, the MCC's March 25, 2003 comments rebut statements in the Joint Motion. The MCC argues that even if the statements in the Joint Motion are true, there still is "no reason" to assess transit carriers such as Qwest terminating access charges for transiting traffic: the Commission correctly found that a carrier transporting "third party" traffic has no obligation to compensate the terminating carrier under section 252(d)2(A). MCC adds that Ronan's claim that the Qwest Western Wireless arbitration is irrelevant is "baseless." CenturyTel's comments of March 31, 2003 do not address this issue. Comments by Qwest and Mid Rivers are not recognized as they are not interveners in this docket.~~

~~25.—In its Reply Comments of March 31, 2003, Ronan repeats certain comments it filed in either its Motion for Clarification or in the Joint Motion and for that reason they are not repeated here. Ronan holds that the order failed to provide an explanation or rationale for having decided how transit traffic should be~~

~~treated. Ronan adds that the Telecommunications Act does not contemplate or address “third party or ‘transiting traffic’ issues...” Ronan comments that the inclusion of transit traffic is outside the scope of the Commission’s authority. Ronan restates the technical and legal problems surrounding transit traffic and again adds that the PSC has approved numerous agreements addressing the transit traffic issue.~~

~~26. The Commission affirms its initial decision (Order No. 6225g, Finding No. 34) on transit traffic. The reasons follow. First, as for the assertion in Ronan’s Motion for Clarification, that Finding No. 34 inadvertently addresses an issue pending in a court that is not before this Commission, the Commission notes the construction of the July 12, 2002 Ronan/Blackfoot Settlement Agreement. The sixth paragraph of the Settlement Agreement contains language partially cited in Finding No 34. The full sentence reads:~~

~~All other traffic not described above, or not included as reciprocal compensation in the tariff, is governed by the RTC “Access Service Tariff, Montana PSC No. 2”, and carriers must pay RTC all carrier access charges due there under for any and all such traffic.~~

~~This sentence is a “catch-all,” a phrase that encompasses anything “not described above.” Long distance transit traffic is “not described above.” By design Ronan must propose to charge transit carriers carrier access charges for “Long Distance Transiting Traffic.” Thus, it appears to the Commission that Ronan has used this~~

~~251(b)(5) docket, since its inception, to establish policy and rates for transit traffic of all kinds. Ronan was not clear from the beginning as to what services it planned to assess carrier access charges. We now know that in addition to its local transit traffic that long distance transit traffic would also be assessed carrier access charges—despite the fact that the latter type of transit traffic is only recently illuminated and delineated from local transit traffic.~~

~~27.—As to the effect of the Commission's decision on pending litigation, the Commission has addressed that issue above. It is the Commission's intent to allow Ronan to assess its carrier access charges for legitimate IntraLATA and InterLATA toll traffic, traffic that is appropriately intrastate traffic regulated by this Commission. In fact, the Commission has not opposed this exclusion in Ronan's February 2000 and November 2002 terms and conditions language (Schedule I. III. J. 15). Thus, Ronan is allowed to assess appropriate carrier access charge rates for such intrastate toll traffic. This exclusion of Ronan's, however, is not labeled "transit" traffic and therefore the sort of "long distance" transit traffic in Ronan's Motion for Clarification must be aside from, in addition to, "IntraLATA and interLATA toll traffic" that is clearly and properly excluded and not assessed reciprocal compensation rates.~~

~~28.—Second, there is no apparent industry standard definition of transit traffic. That there is not and that multiple definitions exist has only emerged as~~

~~this docket evolved and much time elapsed. Ronan's definitions of local transit traffic are not even the same in the myriad filings it has made in this docket.~~

~~Although not yet law, HB 641 that is pending before the Montana legislature does contain a definition of transit traffic—one that does not match any of Ronan's definitions.~~

29.—~~Third, Ronan cites (Joint Motion pages 8-9) to Qwest's interconnection agreements and its SGAT for language that it would apparently find acceptable. Qwest's SGAT contains the provision: "Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs." In this order, the Commission continues to find that the Settlement Agreement is a negotiated interconnection agreement. The Commission does not find this provision in Qwest's SGAT objectionable for purposes of this negotiated interconnection agreement.~~

30.—~~The Qwest SGAT does contain a sentence that reads "Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs, Price Lists or contractual offerings for such third party terminations. In this Qwest SGAT provision, "third parties" originate traffic. They are not the party who performs the transit function of such traffic. The Commission does not object~~

~~to charging the originating third party for such traffic. Similarly, Ronan should assess its appropriate charges on the originators of traffic that terminates on its system — not the party that transits the traffic.~~

~~31. 12.~~ For the above reasons, the Commission affirms its Finding No. ~~34 in Order No. 6225g.~~ In response to the parties' arguments on reconsideration regarding the transiting traffic issue, the Commission expresses no opinion on the "long distance transiting traffic issue" which is not before the Commission in this case. This Order has no applicability to Qwest. The Commission also affirms its modifications to the transiting traffic provisions in the Agreement, contained in Revised Order No. 6225g, Paragraph 31.

Proposed Amendments

~~32. 13.~~ Attachment "A" Issue #1, adds new section G.1 to the original interconnection agreement. This paragraph is approved subject to the following modifications: the title "DS1 Local Transport and Termination Service Tariff" is rejected. The language at the end of this section that reads: "and shall not apply to any other carriers or entities which may interconnect with RTC" is rejected.

~~33. 14.~~ Section G.2 in Attachment "A" Issue #1 ("Most Favored Nation" Clause) is ~~approved~~ rejected as unnecessary, since Blackfoot may "opt-in" to any more favorable Agreement pursuant to 47 U.S.C. §252(i). ~~subject to the~~

word “Tariff” in the last sentence being changed to “agreement.” The word “Tariff” is rejected; substituting the word “agreement” reflects the Commission’s decision in this case.

34. 15. Attachment “B” Issue #3 adds a new sentence to ~~Section III.J~~ Paragraph 15 in the interconnection agreement that reads “Nothing in this Schedule shall be interpreted to prohibit direct-connection “data” calls between end-users.” This sentence is approved.

35. 16. ~~Section III.J.12. Interconnection Agreement, Paragraph 15.~~ Attachment “B” of the March 12, 2003 Joint Motion asserts that new language is added to ~~Section III.J.12~~ paragraph 15 of the interconnection agreement. The attached amendment reads as follows:

~~“12. 15.1. Internet, ISP-Bound traffic,~~ information services and enhanced services;” (new language underlined).

The assertion that the inclusion of “ISP-Bound traffic” is new language is not correct if the assertion is in relation to the compliance tariff that the Commission’s October 31, 2002 order (6342a, D2001.1.14) required Ronan to file. However, “ISP-Bound traffic” is new language in relation to Ronan’s February 8, 2000 filing. Since this language relates to the proposed amendment discussed below, the Commission’s response is combined with and will follow the below discussion on another amendment.

~~36.~~ 17. ~~Section III.I (Sheet 7)~~ Interconnection Agreement, Paragraph 14.

Attachment “B” of the Joint Motion also asserts that new language is added to Section III.I of the interconnection agreement. The attached amendment reads as follows:

DS1 Local Transport and Termination Service must not be used to provide Internet service, either directly or indirectly, or any other enhanced or information Service as defined by the Federal Communications Commission, including but not limited to Internet, ISP-Bound traffic, information services data services, paging, 900-976 and similar services. (New language underlined.)

The above amendments are new with respect to Ronan’s February 8, 2000 filing.

The amendments are not new with respect to the compliance tariff that Ronan filed in response to the Commission’s October 31, 2002 order. The Commission will now respond to the above language amending ~~Sections III. I and III. J.~~ Paragraphs 14 and 15.

~~37.~~ 18. First, the language amendments here, involving “ISP-Bound traffic” and “information” are ones that Ronan made in response to the Commission’s October 31, 2002 order (No. 6342a in D2000.1.14) requiring Ronan to make a compliance tariff filing consistent with the July 12, 2002 Settlement Agreement filed by Ronan and Blackfoot. In turn, the Commission’s December 4, 2002 Notice of Opportunity to Comment invited comments on Ronan’s Compliance Tariff. An issue on which the Commission invited comments

involved the proposal in Section 6 of the Settlement Agreement to exclude “data traffic.”

~~38.~~ 19. The MCC filed timely comments on December 17, 2002. In regard to the Commission’s invitation to comment on whether the exclusion of data traffic is in the public interest, the MCC responded: “Exclusion of ISP-bound traffic appears reasonable. Exclusion of all data traffic, however, may be too broad.” Ronan chose not to respond to this issue in its December 17, 2002 comments. Nor did Ronan’s December 30, 2002 Response to Comments address this issue.

~~39.~~ ~~On February 12, 2003 the Commission issued its Final Order and Order Closing Docket. In relevant part, the Commission’s finding in that order (No. 6225g, Finding No. 31) includes:~~

~~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.~~

~~40.~~ 20. This Commission finding caused the parties to file comments.

First, in their March 12, 2003 Joint Motion the parties assert that the Commission's order expressed a concern they label "local data traffic" (Joint Motion, p. 10). The Motion adds that the moving parties do not intend to prohibit or exclude such calls. Rather, the intent was to prohibit Internet traffic ("ISP-bound"), and "enhanced" and "information services" as defined by the FCC, and other similar "data-types" of services. The Joint Motion adds that the parties do not intend to prohibit end users from connecting two computers by means of a local telephone call: "nothing in this Schedule shall be interpreted to prohibit direct-connection data calls between end users."

~~41.~~ 21. Second, the MCC's March 25, 2003 comments on the Joint Motion assert that the Commission has no authority to exclude data traffic. Instead, the FCC has jurisdiction over information services. And whereas one can argue over price of a DS1 circuit, one cannot exclude Internet or data traffic.

~~42.~~ 22. Third, in its March 31, 2003 Reply Comments, Ronan asserts to comply with the Commission's concern about excluded data traffic, but goes on to address the MCC's comments. Ronan asserts that the MCC's comment, that Internet traffic cannot be excluded, raises a different issue. Ronan believes the MCC reversed its position on this issue. Ronan adds that under current law ISP-bound traffic cannot be included in local reciprocal compensation because the FCC has pre-empted the field and ruled that Internet traffic is interstate, not intrastate:

state Commissions have no jurisdiction over this traffic. Thus, Ronan concludes the Montana PSC has no authority or jurisdiction over ISP-bound traffic and both Federal and Montana law prohibits ISP-bound traffic from being included in a 251(b)(5) reciprocal compensation arrangement.

43. ~~The Commission finds that the MCC raises an issue that is a concern. While the data traffic issue is resolved an Internet traffic issue emerges. Some background precedes the Commission's decision on this issue. Commission review of this interconnection agreement is limited to the agreement itself. The Commission has not viewed the evidentiary record with respect to the tariff filing because the parties negotiated an interconnection agreement that usurped any need for the Commission to dictate tariff terms to Ronan. This background is relevant only to help understand the issue presented on this point. The April 2000 testimony of the MCC and Montana Wireless Inc's witnesses raise no objection to Ronan's initial proposal to exclude certain kinds of traffic from reciprocal compensation. In response to the Commission's express concern with data traffic the MCC illuminates another issue that involves the exclusion of Internet traffic. Before addressing this Internet traffic issue, the Commission notes that it did not raise a "local data traffic" issue as alleged in the Joint Motion. Rather, the Commission raised a data traffic issue.~~

44. ~~Now that the commenters filing the Joint Motion concede that the July~~

~~12, 2002 Settlement Agreement cannot prohibit the exchange of data traffic anymore than they can voice traffic, the issue the Commission addresses in this Order on Motions is whether Internet traffic can and should be excluded. The Commission is obliged to address the “Internet” issue raised by the MCC.~~

~~45. 23.~~ Based on Ronan’s March 31, 2003 Reply Comments referencing and interpreting the FCC’s Intercarrier Compensation for ISP-Bound Traffic order the Commission finds that it must also review this order (reply comments, p. 10). Ronan’s Reply comments based, in part, on this FCC order assert that the Montana PSC has no authority or jurisdiction over ISP-bound traffic and that such service is exclusively the FCC’s jurisdiction. Ronan concludes that both Federal and Montana law prohibit ISP-bound traffic from being included in a 251(b)(5) reciprocal compensation arrangement and the proposed language, as amended for data traffic, should be approved.

~~46. 24.~~ The FCC’s order on Intercarrier Compensation for ISP-Bound Traffic contains findings relevant to the Internet traffic issue that MCC has raised. The FCC’s order establishes an interim compensation mechanism with transitional price cap rates for ISP-bound traffic. The order asserts that the FCC will exercise its authority to determine the appropriate intercarrier compensation for ISP-bound traffic and that state Commissions will not have authority any longer to address the issue. The Commission approves the proposal to exclude ISP-Bound traffic as

~~contained in the parties' filed Agreement. The FCC, of course, is speaking to a rate issue. The interim regime established by the order only affects compensation — rates — applicable to the delivery of ISP-bound traffic. As the FCC asserts, it does not alter a carrier's obligations to transport traffic to points of interconnection. Nothing in the order prevents any carrier from serving or expanding service to ISPs — so long as they recover the cost of additional minutes from ISP customers. As for the applicable rates, the FCC asserts:~~

~~Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to “pick and choose” intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate.~~

~~Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state approved or state arbitrated reciprocal compensation rates reflected in their contracts.~~

~~If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis.~~

~~In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps. (See para. 89.)~~

~~47.—The Commission agrees with Ronan that the FCC’s Intercarrier Compensation for ISP Bound Traffic order is relevant to the issue of excluding Internet traffic.~~

~~¹—However, the Commission disagrees with Ronan’s interpretation of that order. The FCC order did not restrict a state Commission’s decisions on the issue of whether ISP-bound traffic, what Ronan equates with Internet traffic, is permissible. Rather, the FCC’s order addresses rate levels for ISP-bound traffic.²—The Commission also notes that the exclusion of Internet (ISP-bound) traffic, if prohibited, is not a universal prohibition in interconnection agreements as would be expected if in fact illegal. For example, Qwest’s SGAT, which Ronan cites for other purposes in this record, does not exclude ISP-bound traffic; rather, Qwest’s SGAT includes ISP-bound traffic and sets forth rates to accommodate such traffic.³ As a matter of public policy, the Commission finds that, in addition to disallowing Ronan’s exclusion of “data traffic,” the Ronan/Blackfoot Settlement Agreement shall not disallow Internet traffic. Whereas the exclusion of “data traffic” is~~

¹ FCC Order on Remand and Report and Order, CC 96-98, FCC 01-131, released April 27, 2001.

² The Ninth Circuit Court of Appeals noted that “the FCC itself abandoned the distinction between local and interstate traffic as the basis for determining whether reciprocal compensation provisions in interconnection agreements apply to ISP-bound traffic.” Pacific Bell v. Pac West Telecom et al, 2003 U.S. App. LEXIS 6588, decided April 7, 2003. In Pacific Bell the Ninth Circuit concluded that subjecting ISP-bound traffic to reciprocal compensation is consistent with Section 251 because the FCC has not yet resolved whether ISP-bound traffic is “local” within the scope of Section 251.

³ See for example Qwest’s July 3, 2002 Statement of Generally Available Terms and Conditions

~~arguably anti-consumer, the exclusion of Internet traffic appears anticompetitive and therefore is not in the public interest. The FCC's order on Intercarrier Compensation provides a means, ISP rates, to allow customers choices. Ronan now agrees to revise the agreement to not exclude data traffic; however the interconnection agreement between Ronan and Blackfoot is rejected to the extent the agreement disallows/excludes Internet traffic.~~

Other Pending Motions

48. 25. Qwest's Petition to Intervene. On March 21, 2003, Qwest Corporation filed a Petition to Intervene in this docket in order to respond to the motions for clarification and reconsideration. Qwest filed a Response to the motions in conjunction with its Petition to Intervene. Ronan filed a motion for summary denial of Qwest's petition and a motion to strike Qwest's response. The petition to intervene repeats in large part verbatim the Petition to Intervene to intervene that was filed by Qwest in this docket on February 21, 2003. The February 21 Petition to Intervene was denied by the Commission. (See Notice of Commission Action, March 6, 2003.) On March 27, 2003, the Commission voted to deny Qwest's Petition to Intervene that was filed on March 21, 2003. The Commission notes that repeat motions on issues that have been acted on by the Commission, without new information or new arguments, are discouraged. The

Commission also notes that the attorney of record in this matter is not licensed to practice law in Montana and has not filed an application to appear in this proceeding pro hac vice.

49. 26. Ronan's Motion for Clarification and Amendment. ~~As discussed above, the motion for clarification and amendment is rejected. The Commission stands by its analysis and conclusions in Order No. 6225g. The motion for clarification and amendment presents no new information or arguments. The Commission rejects the request to amend paragraph 34 in order to protect Ronan's interest in U.S. Federal District Court. Paragraph 34 stands as written. Ronan's Motion for Clarification and Amendment is approved in part. The Commission has modified the transiting traffic provisions of the Agreement, as described in Order No. 6225g, ¶31. The only transiting issue which is before the Commission in this Docket relates to third party traffic that may be carried over local interconnection facilities. Qwest does not have a local interconnection with RTC, and is not seeking any such local connection. A separate transiting issue which is not addressed in this Docket, is the appropriate rate treatment for "long distance transiting traffic," that is, traffic terminated over long distance trunks which originate from third parties and is transited by another carrier to a LEC. The "long distance transiting issue" is being addressed in separate Federal litigation (*3 Rivers et.al. v. Qwest*, U.S. District Court (Montana District, Great Falls Division),~~

Cause No. CV-99-080-GF; and *Mid-Rivers Telephone Cooperative v. Qwest and Verizon Wireless*, U.S. District Court (Montana District, Billings Division), Cause No. CV 01-163-BLG-RFC); and the Commission expresses no opinion or conclusion on any issue before the Federal Courts in those cases. This Order and the Agreement of the parties has no affect on Qwest.

~~50:~~ 27. Ronan's Motion to Strike Qwest's Response to Joint Motion for Reconsideration. Qwest's petition to intervene was denied by the Commission. Consequently, the brief filed by Qwest is not considered in this docket and Ronan's Motion to Strike Qwest's response is moot.

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), MCA § 69-3-839.
3. The agreement filed with the Commission on July 12, 2002, along with the compliance filing made on November 14, 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 Joint Motion for reconsideration and RTC's Motion for Clarification are ~~is~~-approved in part and denied in part. The agreement of the parties, together with the amendments contained in the attachments to the Joint Motion, submitted to the Commission for approval pursuant to the 1996 Act, is approved in part and rejected in part, as set forth in this Order and in Order No. 6225g.

~~IT IS FURTHER ORDERED that Ronan's motion for clarification is denied.~~

IT IS FURTHER ORDERED that Qwest's Petition to Intervene is denied and the Brief filed with the petition is stricken from the record.

IT IS FURTHER ORDERED that Ronan's Motion for summary denial of Qwest's Petition to Intervene and motion to strike Qwest's Brief is moot.

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)

4. In the Joint Motion for Reconsideration Ronan and Blackfoot filed two attachments that contain amendatory language to the interconnection agreement, attachment “A” and attachment “B.”

5. The proposed amendments, the motion for reconsideration, and the other motions filed since Order No. 6225g was entered are addressed below. This order addresses the issues presented in the following manner: motion for reconsideration, proposed amendments and other matters.

Findings of Fact

Motion for Reconsideration

6. In the motions for reconsideration and clarification and the responses thereto filed after the Commission issued its Final Order No. 6225g, several issues were raised, which are addressed below.

Applicability of Ronan and Blackfoot’s Interconnection Agreement to “any and all wireline and wireless carriers.”

7. Ronan and Blackfoot suggest they can comply with the Commission’s final order by amending the interconnection agreement to expressly limit its application solely to Ronan and Blackfoot. This proposed amendment misconstrues the Commission’s direction in Order No. 6225g. The Commission rejected the agreement’s applicability to “any and all” carriers. The Commission stated that for the agreement to be approved, it “must be altered to apply to just the two parties – Ronan and Blackfoot.” (Paragraph 29, Order No. 6225g.) To the extent the agreement precludes other carriers from interconnecting with Ronan on the same terms as those provided to Blackfoot it is rejected. Ronan and Blackfoot may not by this agreement bind any other carrier to its terms and conditions. It is an interconnection agreement between Blackfoot and Ronan only, and the Commission in Order No. 6225g rejected the attempt by Ronan and Blackfoot to bind “any and all carriers” to the terms of this agreement. The Commission also rejects any attempt by Ronan and Blackfoot to preclude other carriers accessing the terms and conditions available to Blackfoot in this agreement.

Most favored Nation Clause.

8. As discussed in paragraph 33 below, this language is approved with the modification required.

Rural Exemption.

9. In Order No. 6225g, the Commission approved Section 12 of the interconnection agreement that addressed Blackfoot's and Ronan's mutual agreement to leave the rural exemption contained in 47 U.S.C. § 251(f)(1)(A) or (B) in place with respect to each other without challenge for five years. In the Joint Motion for Reconsideration, Ronan and Blackfoot argue that Ronan made no implied or voluntary waiver of its rights under 251(f)(1). The MCC responded in its comments that the Commission should reject Ronan's suggestion that it has not waived its rural exemption. The MCC argues that because Ronan voluntarily negotiated an interconnection agreement with Blackfoot, any claim of exemption is moot. In its reply to the MCC's comments, Ronan argues that it has never taken any action inconsistent with its rural exemption. CenturyTel filed comments for the first time in this proceeding in response to this issue, arguing that when a rural company fulfills its obligations under 251(b) of the Act it cannot thereby be deemed to have waived its exemption from obligations contained in Section 251(c) of the Act.

10. The Commission set forth in paragraphs 2 through 5 of Order No. 6225g the history that gives rise to this argument. That history shall not be repeated here. Relevant to the arguments presented here is the fact that Ronan invoked its rural exemption in this case to avoid arbitrating an interconnection agreement with Blackfoot before the Commission. The Commission found that Ronan's exempt status under 47 U.S.C. § 251(f)(1)(A) allowed Ronan to avoid negotiation, and the Commission could not arbitrate an agreement that had not first been negotiated. Ronan conceded however that it had an obligation to provide interconnection arrangements to carriers so requesting. (See paragraph 4 of Order No. 6225g and footnotes thereto.) It is disingenuous for Ronan to argue now that the Commission ordered Ronan to file a tariff to establish reciprocal compensation arrangements that would be available to Blackfoot, and although Ronan complied with that order, it "has never taken any action inconsistent with its rural exemption." The Commission's direction to Ronan to file a tariff providing terms and conditions upon which Blackfoot, or any other carrier, could do business with it was a necessary procedural mechanism to implement an obligation Ronan acknowledged it had. The need for that procedural device was created by Ronan's own efforts to avoid dealing with Blackfoot. Ronan was not merely complying with Commission direction; it was bound by statute to provide terms and conditions for interconnection agreements. 47 U.S.C. § 251(b). Ronan conceded that the rural exemption protection contained in 251(f) did not protect it

from interconnecting with other carriers as required by 251(b), and CenturyTel also acknowledges that obligation. In arguing that it has not waived its rural exemption by having negotiated an interconnection agreement with Blackfoot (see paragraphs 10 through 13 of Order No. 6225g), Ronan attempts to use the rural exemption contained in 251(f)(1) as a shield and a sword. Ronan can't have it both ways. The rural exemption allowed Ronan to avoid *arbitrating* an interconnection agreement with Blackfoot, because Ronan was not first obligated to negotiate and arbitration cannot occur without negotiation first taking place. Ronan then in fact negotiated an interconnection agreement with Blackfoot. Here, Ronan invoked the rural exemption shield to avoid arbitration, but then entered into negotiations in spite of the protection afforded by the rural exemption.

11. With respect to the very narrow issue of whether a party can invoke the rural exemption to avoid arbitration of an interconnection agreement, then in fact negotiate an agreement, and then claim that the rural exemption still applies as to that situation, the Commission rejects this result. In negotiating the interconnection agreement with Blackfoot, the Commission finds that Ronan waived its rural exemption *to the extent that it was invoked* to protect Ronan from arbitrating an interconnection agreement before the Commission. This point is moot for purposes of this docket however since the parties have submitted their negotiated agreement for approval. Had Blackfoot asked for arbitration of this agreement after the negotiations had taken place, the rural exemption could no longer provide a shield for Ronan. The Commission does not address the issues presented by CenturyTel because they are not applicable to this case. The Commission has made no determination about the scope of the rural exemption with respect to its invocation and waiver outside the issue presented in this docket. In this case, the Commission finds that a party may not use the rural exemption to avoid arbitration, then negotiate an interconnection agreement, and retain the cloak of the rural exemption as a protective device. This kind of procedural sleight of hand extends the time for resolution of cases pending before the Commission, wastes time and resources, and achieves nothing. The purpose of the Act is frustrated by this kind of posturing, and the Commission notes that it has not served any of the parties in this docket well.

Negotiated Interconnection Agreement as Opposed to a Tariff.

12. In the Joint Motion for reconsideration Ronan and Blackfoot object to the characterization of their agreement as a negotiated interconnection agreement, because that may allow an interpretation that Ronan waived its rural exemption. Ronan and Blackfoot do not object to

the review applied by the Commission to this agreement as a negotiated interconnection agreement, and in reply to the MCC state that the Commission's approach to the agreement is appreciated "for the purpose of applying a different standard of review pursuant to 47 U.S.C. § 252(e)(2)(A)." The MCC argues that the Commission can only approve the price terms contained in the agreement if it is a negotiated interconnection agreement, because the price terms do not comply with the rules of the Federal Communications Commission (FCC) on costs or default proxy rates. The MCC points out that if the agreement is a tariff applicable to all carriers, then the tariff must comply with FCC rules, which would require Ronan to produce its costs, since Ronan has opposed the other two alternative methods of complying with FCC rules on reciprocal compensation rates. Ronan objects to the characterization of the agreement as a negotiated interconnection agreement because of the potential implications on the rural exemption issue.

13. The Commission has addressed the rural exemption issue. With respect to characterizing the agreement as a negotiated interconnection agreement, the Commission rejects Ronan's assertion that the characterization was simply for the purposes of applying a certain standard of review. The Commission set forth in paragraphs 10 through 13 of Order No. 6225g its analysis of this agreement as an interconnection agreement. Once the Commission concluded that the agreement was a negotiated interconnection agreement, the standard of review was applied as required by 47 U.S.C. § 252(e). Contrary to Ronan's interpretation, the Commission did not "characterize" the agreement as a negotiated interconnection agreement for purposes of applying a certain level of review. The Commission analyzed the facts and history of this docket, the agreement that was presented to it for review, and concluded that based on the law and the facts this agreement is a negotiated interconnection agreement. The applicable standard of review flows from that determination; not as Ronan indicates the other way around. The Commission rejects Ronan's request in its reply to the MCC's comments to approve this agreement as a reciprocal compensation Tariff. The Commission stands by its analysis set forth in Order No. 6225g and concludes that the agreement presented by Ronan and Blackfoot is a negotiated interconnection agreement.

Transiting Traffic.

14. In its motion for clarification, Ronan asks that the Commission amend paragraph 34 of Order No. 6225g to state that the Commission does not intend to express any opinion or conclusion that might be interpreted to apply to that issue U.S. District Court. Ronan reiterated this

point in its reply brief, asking that the Commission add language to its order making it clear that the Commission is not expressing a conclusion or opinion regarding Qwest's responsibility for terminating access charges for terminating traffic over long distance trunks. No party responded to this issue. The Commission rejects Ronan's request. Order No. 6225g sets forth the Commission's decision on review of an interconnection agreement between Blackfoot and Ronan in which the Commission approved and rejected the terms of the agreement as required by statute. 47 U.S.C. § 252(e). The Commission's analysis of the agreement and subsequent rejection or approval of its terms and conditions may be read and argued by the parties as and where they deem fit. This Commission refrains from instructing another tribunal as to the applicability of its conclusions and analysis. Additionally, it is inappropriate for this Commission to provide one party a security blanket it can attempt to use to protect its interests elsewhere. The procedural posture and substantive issues in this docket are unique to the agreement presented by Ronan and Blackfoot for review by this Commission. The Commission has reviewed the agreement and made a decision about the issues presented in that agreement. Paragraphs 26 and 34 in Order No. 6225g stand as written.

15. The issue of transit traffic arose in Ronan's February 8, 2000 Application for Approval of Detariffed New Service – DS1 Local Transport and Termination Service. That Application defines transit traffic in relation to certain kinds of local traffic. There is no other definition of transit traffic in the Application. The Application asserts that testimony will be filed in support of the Application. Ronan's February 10, 2000 Direct Testimony of Gregory Widney in support of the application, however, is silent on the issue of transit traffic. The intervenor testimony of MCC and MWI is also silent on the subject of transit traffic. Ronan's and BFT's July 12, 2002 Settlement Agreement revises slightly the February 8, 2000 definition of transit traffic but still defines transit traffic as certain kinds of local traffic. Ronan's November 14, 2002 compliance tariff filing again revises the July 12, 2002 definition of transit traffic and continues to list (Schedule I. III. J 14) transit traffic as a service not provided with DS1 Service.

16. Final Order No. 6225g (Finding No. 34) provides the Commission's findings on the Settlement Agreement's transit traffic provision. The Commission's finding reads:

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.

17. In response to Final Order No. 6225g, Ronan filed on March 7, 2003 a corrected Motion for Clarification and Amendment of Order. Ronan and Blackfoot also filed a Joint Motion for Clarification and Reconsideration. Each is summarized in turn. First, Ronan’s corrected Motion for Clarification and Amendment asserts that the above finding (No.34) inadvertently expresses a conclusion that might be interpreted to apply to a separate issue pending in Federal Court – that is not before the Commission in “this docket.” In its Motion for Clarification, Ronan, for the first time, distinguishes two types of transit traffic, the “Local Interconnection” and the “Long Distance” transit traffic. The Commission notes that, although the former (“Local Interconnection”) cites to the “RTC tariff at issue in this proceeding” the definition here is only with respect to wireline traffic and that this definition differs from the definition of transit traffic in the July 12, 2002 Settlement Agreement. It differs in several obvious respects. In its Motion for Clarification, Ronan asks the Commission to amend Finding No. 34 to clarify that the Long Distance Transiting Traffic is not an issue before the Commission in this Docket and that the Commission did not intend to express an opinion, or conclusion that might be interpreted to apply to the issue in the U.S. District Court.

18. Second, the Joint Motion for Clarification and Reconsideration filed by Ronan, Blackfoot and Montana Wireless Inc. (hereafter “the parties”) includes Issue #2 Transiting Traffic. Among other points the Joint Motion for Clarification and Reconsideration asserts: (1) that Finding No. 34 confuses two distinct types of transiting traffic by referring to transit traffic carried by Qwest or other providers; (2) that the Final Order is unclear because Qwest does not have nor does it seek any local interconnection with RTC and therefore could not possibly carry “transiting traffic” over such a connection; and (3) that the Telecommunications Act and the FCC’s rules do not include “third party” “transiting traffic” within local reciprocal compensation arrangements.

19. The Joint Motion proposal prohibiting transit traffic from paying reciprocal compensation rates is based on technical and legal concerns including: (a) RTC cannot identify a “third party carrier” that originates traffic that transits another carrier’s network; (b) to allow transit traffic invites arbitrage by “third party” carriers that “could” attempt to route non-local traffic, such as long distance, over the “local interconnection” to avoid relatively high carrier access charges and instead pay lower reciprocal compensation rates; (c) a host of legal problems such as a “third party” originating carrier that claims it did not order service from the carrier terminating its traffic; and (d) because Ronan lacks the capability to block traffic from a “third party,” it lacks the means to enforce payment from “third parties” for such traffic.

20. The Joint Motion next maintains that the “transiting traffic at issue herein” should not be confused with the “Long Distance Transiting Traffic” issue. The reason is that the issue “herein” regards traffic originating from “third parties” that “might” be routed over a local interconnect by “...’transiting’ the facilities of the local interconnecting carrier (i.e., Blackfoot herein)” whereas the “Long Distance Transiting Traffic” issue addresses the obligation of IXCs to compensate local carriers for “all” traffic routed by an IXC over long-distance toll trunks. The Joint Motion asks that the Commission express no opinion or conclusion with regard to the latter, long distance, issue.

21. The Joint Motion further asserts that the Qwest-Western Wireless arbitration is irrelevant because transiting traffic for wireline terminating reciprocal compensation was not addressed in the order.

22. Last, the Joint Motion asserts that this Commission has approved numerous interconnection agreements that contain language excluding transit traffic from local reciprocal compensation arrangements. The Joint Motion cites to the MWI-USWC (D97.9.168) case as one such instance. That agreement, in part reads that “Where either Party acts as an IntraLATA Toll provider or InterLATA Interexchange (IXC) or where either Party interconnects and delivers traffic to the other from third parties [i.e., “transit traffic”] each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs or contractual offerings for such third party terminations.” Qwest’s SGAT contains a related and slightly different provision.

23. The Joint Motion concludes that for the above reasons, and because no party objected to or challenged the proposal to prohibit transit traffic, the Commission lacks any record upon which

it can modify or reject the transit traffic provisions of the proposed tariff. Thus, as a matter of law the proposal must be approved.

24. Subsequent to the filing of the above discussed motions others filed comments or reply comments. First, the MCC's March 25, 2003 comments rebut statements in the Joint Motion. The MCC argues that even if the statements in the Joint Motion are true, there still is "no reason" to assess transit carriers such as Qwest terminating access charges for transiting traffic: the Commission correctly found that a carrier transporting "third-party" traffic has no obligation to compensate the terminating carrier under section 252(d)2(A). MCC adds that Ronan's claim that the Qwest-Western Wireless arbitration is irrelevant is "baseless." CenturyTel's comments of March 31, 2003 do not address this issue. Comments by Qwest and Mid-Rivers are not recognized as they are not interveners in this docket.

25. In its Reply Comments of March 31, 2003, Ronan repeats certain comments it filed in either its Motion for Clarification or in the Joint Motion and for that reason they are not repeated here. Ronan holds that the order failed to provide an explanation or rationale for having decided how transit traffic should be treated. Ronan adds that the Telecommunications Act does not contemplate or address "third party or 'transiting traffic' issues..." Ronan comments that the inclusion of transit traffic is outside the scope of the Commission's authority. Ronan restates the technical and legal problems surrounding transit traffic and again adds that the PSC has approved numerous agreements addressing the transit traffic issue.

26. The Commission affirms its initial decision (Order No. 6225g, Finding No. 34) on transit traffic. The reasons follow. First, as for the assertion in Ronan's Motion for Clarification, that Finding No. 34 inadvertently addresses an issue pending in a court that is not before this Commission, the Commission notes the construction of the July 12, 2002 Ronan/Blackfoot Settlement Agreement. The sixth paragraph of the Settlement Agreement contains language partially cited in Finding No 34. The full sentence reads:

All other traffic not described above, or not included as reciprocal compensation in the tariff, is governed by the RTC "Access Service Tariff, Montana PSC No. 2", and carriers must pay RTC all carrier access charges due there under for any and all such traffic.

This sentence is a "catch-all," a phrase that encompasses anything "not described above." Long distance transit traffic is "not described above." By design Ronan must propose to charge transit carriers carrier access charges for "Long Distance Transiting Traffic." Thus, it appears to the

Commission that Ronan has used this 251(b)(5) docket, since its inception, to establish policy and rates for transit traffic of all kinds. Ronan was not clear from the beginning as to what services it planned to assess carrier access charges. We now know that in addition to its local transit traffic that long distance transit traffic would also be assessed carrier access charges – despite the fact that the latter type of transit traffic is only recently illuminated and delineated from local transit traffic.

27. As to the effect of the Commission's decision on pending litigation, the Commission has addressed that issue above. It is the Commission's intent to allow Ronan to assess its carrier access charges for legitimate IntraLATA and InterLATA toll traffic, traffic that is appropriately intrastate traffic regulated by this Commission. In fact, the Commission has not opposed this exclusion in Ronan's February 2000 and November 2002 terms and conditions language (Schedule I. III. J. 15). Thus, Ronan is allowed to assess appropriate carrier access charge rates for such intrastate toll traffic. This exclusion of Ronan's, however, is not labeled "transit" traffic and therefore the sort of "long distance" transit traffic in Ronan's Motion for Clarification must be aside from, in addition to, "IntraLATA and interLATA toll traffic" that is clearly and properly excluded and not assessed reciprocal compensation rates.

28. Second, there is no apparent industry standard definition of transit traffic. That there is not and that multiple definitions exist has only emerged as this docket evolved and much time elapsed. Ronan's definitions of local transit traffic are not even the same in the myriad filings it has made in this docket. Although not yet law, HB 641 that is pending before the Montana legislature does contain a definition of transit traffic – one that does not match any of Ronan's definitions.

29. Third, Ronan cites (Joint Motion pages 8-9) to Qwest's interconnection agreements and its SGAT for language that it would apparently find acceptable. Qwest's SGAT contains the provision: "Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective tariffs." In this order, the Commission continues to find that the Settlement Agreement is a negotiated interconnection agreement. The Commission does not find this provision in Qwest's SGAT objectionable for purposes of this negotiated interconnection agreement.

30. The Qwest SGAT does contain a sentence that reads "Where either Party interconnects and delivers traffic to the other from third parties, each Party shall bill such third parties the appropriate charges pursuant to its respective Tariffs, Price Lists or contractual offerings

for such third party terminations. In this Qwest SGAT provision, “third parties” originate traffic. They are not the party who performs the transit function of such traffic. The Commission does not object to charging the originating third party for such traffic. Similarly, Ronan should assess its appropriate charges on the originators of traffic that terminates on its system – not the party that transits the traffic.

31. For the above reasons, the Commission affirms its Finding No. 34 in Order No. 6225g.

Proposed Amendments

32. Attachment “A” Issue #1, adds new section G.1 to the original interconnection agreement. This paragraph is approved subject to the following modifications: the title “DS1 Local Transport and Termination Service Tariff” is rejected. The language at the end of this section that reads: “and shall not apply to any other carriers or entities which may interconnect with RTC” is rejected.

33. Section G.2 in Attachment “A” Issue #1 is approved subject to the word “Tariff” in the last sentence being changed to “agreement.” The word “Tariff” is rejected; substituting the word “agreement” reflects the Commission’s decision in this case.

34. Attachment “B” Issue #3 adds a new sentence to Section III.J in the interconnection agreement that reads “Nothing in this Schedule shall be interpreted to prohibit direct-connection “data” calls between end-users.” This sentence is approved.

35. Section III.J.12. Attachment “B” of the March 12, 2003 Joint Motion asserts that new language is added to Section III.J.12 of the interconnection agreement. The attached amendment reads as follows:

“12. Internet, ISP-Bound traffic, information services and enhanced services;” (new language underlined).

The assertion that the inclusion of “ISP-Bound traffic” is new language is not correct if the assertion is in relation to the compliance tariff that the Commission’s October 31, 2002 order (6342a, D2001.1.14) required Ronan to file. However, “ISP-Bound traffic” is new language in relation to Ronan’s February 8, 2000 filing. Since this language relates to the proposed amendment discussed below, the Commission’s response is combined with and will follow the below discussion on another amendment.

36. Section III.I (Sheet 7). Attachment “B” of the Joint Motion also asserts that new language is added to Section III.I of the interconnection agreement. The attached amendment reads as follows:

DS1 Local Transport and Termination Service must not be used to provide Internet service, either directly or indirectly, or any other enhanced or information Service as defined by the Federal Communications Commission, including but not limited to Internet, ISP-Bound traffic, information services data services, paging, 900-976 and similar services. (New language underlined.)

The above amendments are new with respect to Ronan’s February 8, 2000 filing. The amendments are not new with respect to the compliance tariff that Ronan filed in response to the Commission’s October 31, 2002 order. The Commission will now respond to the above language amending Sections III. I and III. J.

37. First, the language amendments here, involving “ISP-Bound traffic” and “information” are ones that Ronan made in response to the Commission’s October 31, 2002 order (No. 6342a in D2000.1.14) requiring Ronan to make a compliance tariff filing consistent with the July 12, 2002 Settlement Agreement filed by Ronan and Blackfoot. In turn, the Commission’s December 4, 2002 Notice of Opportunity to Comment invited comments on Ronan’s Compliance Tariff. An issue on which the Commission invited comments involved the proposal in Section 6 of the Settlement Agreement to exclude “data traffic.”

38. The MCC filed timely comments on December 17, 2002. In regard to the Commission’s invitation to comment on whether the exclusion of data traffic is in the public interest, the MCC responded: “Exclusion of ISP-bound traffic appears reasonable. Exclusion of all data traffic, however, may be too broad.” Ronan chose not to respond to this issue in its December 17, 2002 comments. Nor did Ronan’s December 30, 2002 Response to Comments address this issue.

39. On February 12, 2003 the Commission issued its Final Order and Order Closing Docket. In relevant part, the Commission’s finding in that order (No. 6225g, Finding No. 31) includes:

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.

40. This Commission finding caused the parties to file comments. First, in their March 12, 2003 Joint Motion the parties assert that the Commission's order expressed a concern they label "local data traffic" (Joint Motion, p. 10). The Motion adds that the moving parties do not intend to prohibit or exclude such calls. Rather, the intent was to prohibit Internet traffic ("ISP-bound"), and "enhanced" and "information services" as defined by the FCC, and other similar "data-types" of services. The Joint Motion adds that the parties do not intend to prohibit end users from connecting two computers by means of a local telephone call: "nothing in this Schedule shall be interpreted to prohibit direct-connection data calls between end users."

41. Second, the MCC's March 25, 2003 comments on the Joint Motion assert that the Commission has no authority to exclude data traffic. Instead, the FCC has jurisdiction over information services. And whereas one can argue over price of a DS1 circuit, one cannot exclude Internet or data traffic.

42. Third, in its March 31, 2003 Reply Comments, Ronan asserts to comply with the Commission's concern about excluded data traffic, but goes on to address the MCC's comments. Ronan asserts that the MCC's comment, that Internet traffic cannot be excluded, raises a different issue. Ronan believes the MCC reversed its position on this issue. Ronan adds that under current law ISP-bound traffic cannot be included in local reciprocal compensation because the FCC has pre-empted the field and ruled that Internet traffic is interstate, not intrastate: state Commissions have no jurisdiction over this traffic. Thus, Ronan concludes the Montana PSC has no authority or jurisdiction over ISP-bound traffic and both Federal and Montana law prohibits ISP-bound traffic from being included in a 251(b)(5) reciprocal compensation arrangement.

43. The Commission finds that the MCC raises an issue that is a concern. While the data traffic issue is resolved an Internet traffic issue emerges. Some background precedes the Commission's decision on this issue. Commission review of this interconnection agreement is limited to the agreement itself. The Commission has not viewed the evidentiary record with respect to the tariff filing because the parties negotiated an interconnection agreement that usurped any need for the Commission to dictate tariff terms to Ronan. This background is relevant only to help understand

the issue presented on this point. The April 2000 testimony of the MCC and Montana Wireless Inc's witnesses raise no objection to Ronan's initial proposal to exclude certain kinds of traffic from reciprocal compensation. In response to the Commission's express concern with data traffic the MCC illuminates another issue that involves the exclusion of Internet traffic. Before addressing this Internet traffic issue, the Commission notes that it did not raise a "local data traffic" issue as alleged in the Joint Motion. Rather, the Commission raised a data traffic issue.

44. Now that the commenters filing the Joint Motion concede that the July 12, 2002 Settlement Agreement cannot prohibit the exchange of data traffic anymore than they can voice traffic, the issue the Commission addresses in this Order on Motions is whether Internet traffic can and should be excluded. The Commission is obliged to address the "Internet" issue raised by the MCC.

45. Based on Ronan's March 31, 2003 Reply Comments referencing and interpreting the FCC's Intercarrier Compensation for ISP-Bound Traffic order the Commission finds that it must also review this order (reply comments, p. 10). Ronan's Reply comments based, in part, on this FCC order assert that the Montana PSC has no authority or jurisdiction over ISP-bound traffic and that such service is exclusively the FCC's jurisdiction. Ronan concludes that both Federal and Montana law prohibit ISP-bound traffic from being included in a 251(b)(5) reciprocal compensation arrangement and the proposed language, as amended for data traffic, should be approved.

46. The FCC's order on Intercarrier Compensation for ISP-Bound Traffic contains findings relevant to the Internet traffic issue that MCC has raised. The FCC's order establishes an interim compensation mechanism with transitional price cap rates for ISP-bound traffic. The order asserts that the FCC will exercise its authority to determine the appropriate intercarrier compensation for ISP-bound traffic and that state Commissions will not have authority any longer to address the issue. The FCC, of course, is speaking to a rate issue. The interim regime established by the order only affects compensation – rates – applicable to the delivery of ISP-bound traffic. As the FCC asserts, it does not alter a carrier's obligations to transport traffic to points of interconnection. Nothing in the order prevents any carrier from serving or expanding service to ISPs – so long as they recover the cost of additional minutes from ISP customers. As for the applicable rates, the FCC asserts:

Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes,

depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate.

Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state approved or state-arbitrated reciprocal compensation rates reflected in their contracts.

If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis.

In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps. (See para. 89.)

47. The Commission agrees with Ronan that the FCC's Intercarrier Compensation for ISP-Bound Traffic order is relevant to the issue of excluding Internet traffic.¹ However, the Commission disagrees with Ronan's interpretation of that order. The FCC order did not restrict a state Commission's decisions on the issue of whether ISP-bound traffic, what Ronan equates with Internet traffic, is permissible. Rather, the FCC's order addresses rate levels for ISP-bound traffic.² The Commission also notes that the exclusion of Internet (ISP-bound) traffic, if prohibited, is not a universal prohibition in interconnection agreements as would be expected if in fact illegal. For example, Qwest's SGAT, which Ronan cites for other purposes in this record, does not exclude ISP-bound traffic; rather, Qwest's SGAT includes ISP-bound traffic and sets forth rates to accommodate such traffic.³ As a matter of public policy, the Commission finds that, in addition to disallowing

¹ FCC Order on Remand and Report and Order, CC 96-98, FCC 01-131, released April 27, 2001.

² The Ninth Circuit Court of Appeals noted that "the FCC itself abandoned the distinction between local and interstate traffic as the basis for determining whether reciprocal compensation provisions in interconnection agreements apply to ISP-bound traffic." Pacific Bell v. Pac-West Telecom et al, 2003 U.S. App. LEXIS 6588, decided April 7, 2003. In Pacific Bell the Ninth Circuit concluded that subjecting ISP-bound traffic to reciprocal compensation is consistent with Section 251 because the FCC has not yet resolved whether ISP-bound traffic is "local" within the scope of Section 251.

³ See for example Qwest's July 3, 2002 Statement of Generally Available Terms and Conditions (Section 7.3.6).

Ronan's exclusion of "data traffic," the Ronan/Blackfoot Settlement Agreement shall not disallow Internet traffic. Whereas the exclusion of "data traffic" is arguably anti-consumer, the exclusion of Internet traffic appears anticompetitive and therefore is not in the public interest. The FCC's order on Intercarrier Compensation provides a means, ISP rates, to allow customers choices. Ronan now agrees to revise the agreement to not exclude data traffic; however the interconnection agreement between Ronan and Blackfoot is rejected to the extent the agreement disallows/excludes Internet traffic.

Other Pending Motions

48. Qwest's Petition to Intervene. On March 21, 2003, Qwest Corporation filed a Petition to Intervene in this docket in order to respond to the motions for clarification and reconsideration. Qwest filed a Response to the motions in conjunction with its Petition to Intervene. Ronan filed a motion for summary denial of Qwest's petition and a motion to strike Qwest's response. The petition to intervene repeats in large part verbatim the Petition to Intervene to intervene that was filed by Qwest in this docket on February 21, 2003. The February 21 Petition to Intervene was denied by the Commission. (See Notice of Commission Action, March 6, 2003.) On March 27, 2003, the Commission voted to deny Qwest's Petition to Intervene that was filed on March 21, 2003. The Commission notes that repeat motions on issues that have been acted on by the Commission, without new information or new arguments, are discouraged. The Commission also notes that the attorney of record in this matter is not licensed to practice law in Montana and has not filed an application to appear in this proceeding pro hac vice.

49. Ronan's Motion for Clarification and Amendment. As discussed above, the motion for clarification and amendment is rejected. The Commission stands by its analysis and conclusions in Order No. 6225g. The motion for clarification and amendment presents no new information or arguments. The Commission rejects the request to amend paragraph 34 in order to protect Ronan's interest in U.S. Federal District Court. Paragraph 34 stands as written.

50. Ronan's Motion to Strike Qwest's Response to Joint Motion for Reconsideration. Qwest's petition to intervene was denied by the Commission. Consequently, the brief filed by Qwest is not considered in this docket and Ronan's Motion to Strike Qwest's response is moot.

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), MCA § 69-3-839.

3. The agreement filed with the Commission on July 12, 2002, along with the compliance filing made on November 14, 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 Joint Motion for reconsideration is approved in part and denied in part. The agreement of the parties, together with the amendments contained in the attachments to the Joint Motion, submitted to the Commission for approval pursuant to the 1996 Act, is approved in part and rejected in part, as set forth in this Order and in Order No. 6225g.

IT IS FURTHER ORDERED that Ronan's motion for clarification is denied.

IT IS FURTHER ORDERED that Qwest's Petition to Intervene is denied and the Brief filed with the petition is stricken from the record.

IT IS FURTHER ORDERED that Ronan's Motion for summary denial of Qwest's Petition to Intervene and motion to strike Qwest's Brief is moot.

DONE AND DATED this 9th day of April, 2003 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman
Voting to Dissent in Part

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.

LIMITED DISSENT OF CHAIRMAN ROWE

In January, 2000, the Commission determined that the “rural exemption” under 47 U.S.C. Section 251(f)(1)(A) allowed Ronan to avoid negotiation and thereby avoid arbitration. In its Final Order the Commission approved those parts of the parties’ agreement which would preserve the rural exemption between the parties for five years. The Commission should have made clear in this Order on Motion for Reconsideration that it has made no determination inconsistent with preservation of the rural exemption, limited or not.

Section 251(f)(1)(B) sets out a detailed, specific procedure for a state commission inquiry to determine whether the exemption should be terminated. No party in these proceedings ever invoked that process. Despite the extended discussion of the rural exemption in this Order on Reconsideration, the Commission inexplicably and illogically fails to discuss the existence of this procedure or the fact that it was never invoked.

It is a mistake in any way to suggest that by voluntarily negotiating an interconnection agreement a rural carrier might somehow implicitly waive its exemption. Negotiation is critical to success of the Telecommunications Act structure, and to the interconnected telecommunications industry. The Commission should not gratuitously discourage voluntary negotiation. Its Order on Reconsideration may do exactly that.

As to the arcane and opaque transit traffic issue, *this* commissioner does not express any opinion or reach any conclusion applicable to ongoing litigation in federal district court. The Commission’s decision is grounded in a very specific set of facts and a unique procedural context.

RESPECTFULLY SUBMITTED this _____ day of April, 2003.

BOB ROWE
Chairman