

**Pat Wood, III**  
Chairman

**Brett A. Perlman**  
Commissioner

**W. Lane Lanford**  
Executive Director



## *Public Utility Commission of Texas*

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April 20, 2001

Mr. Richard Strom  
1445 Ross Avenue  
Suite 3200  
Dallas, Texas 75202

Re: Dispute between the City of Fort Worth and MCImetro relating to inclusion of license fees in the municipal base amount.

Dear Mr. Strom:

As we discussed on April 6, 2001, Commission staff believes that the City of Fort Worth (FW) properly excluded the fees related to the facilities covered under the long distance license agreement from its base amount. Therefore, based on our understanding of the situation, Commission staff has determined that it will not revise the rates for Fort Worth. Accordingly, it is our position that the terms of the existing license agreement between MCImetro (MCIM) and FW govern this dispute.

This dispute centers on the question of whether a license agreement between FW and MCIM should be nullified under Chapter 283 of the Local Government Code (Chapter 283). MCIM paid full compensation for the license in FY 2000 and requested a refund from FW for July through October of that year. FW maintained that MCIM should continue to compensate the city for the license. In your letter of December 7, 2000, you asked the Commission, as the mutually agreed dispute arbiter, to resolve the dispute. Because no formal complaint has been filed, Commission staff opted to consider this situation under Docket Number 23557, Forum for Municipal and Provider Complaints. This letter and all documentation related to this matter will be filed under Docket Number 23557.

FW's position is that municipalities were not allowed to include license fees related to long distance in the calculation of the municipal base amount. The license in question was originally granted to MCI Telecommunication Corporation in 1985 specifically for the use of long distance facilities. Although the original license was amended in 1993 and the facilities were transferred in 1995 to MCIM, a subsidiary CLEC, FW maintains that the license itself is outside of the framework for compensation under Chapter 283.

FW supports its position by referring to the order adopting §26.463 at the October 21, 1999 Open Meeting, which says:

The commission is persuaded that the base amount should not include fees from CTPs that are interexchange carriers, cable providers or wireless providers. Access lines belonging to IXC's, cable providers, and wireless providers generally do not meet the statutory definition of "access lines" under HB 1777. If the commission were to include compensation from these providers, but exclude their access lines, based upon the statutory definition of "access lines," the burden of compensating the municipality for use of the rights-of-way would be shouldered inequitably by ILECs and CLECs. To obtain consistent results, it is appropriate to include only providers whose access lines meet the definition of access lines as defined by §283.002 of the Local Government Code. Through this approach, the commission will ensure that the base amount is comprised of monies from the same providers over whose access lines these fees will be spread. Therefore, the commission revises the definition of base amount to exclude fees from IXC's, cable and wireless providers who may be CTPs, but whose lines do not meet the definition of access lines. Compensation from these providers will continue outside the framework of HB 1777.

This comment is reflected in the Commission's adopted rules at P.U.C. SUBST. R. §26.463(c)(1)(B) as:

The base amount does not include compensation received from interexchange carriers, cable provider or wireless providers, who may be CTPs, but whose lines do not meet the definition of access line under Local Government Code §283.002.

MCIM's position is that, as a certificated telecommunications provider (CTP), the access line charges it pays to municipalities should constitute full compensation. MCIM holds that allowing cities the right to inspect a CTP's assets to determine the type of traffic (local or long-distance) would create a very dangerous precedent. MCIM would like the Commission to find against FW's interpretation and recalculate the base amount for FW to include the license fees related to long distance in existing interexchange franchise agreements.

MCIM argues that "pursuant to law, the only compensation CTPs pay to municipalities are access line charges, which are being paid." MCIM is referring to §283.051(a) of the Local Government Code, which reads:

Notwithstanding any other law, a certificated telecommunications provider that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the commission under Section 283.055.

Based on the information presented to us thus far, Commission staff believe that the City of Fort Worth has correctly interpreted Commission rules and appropriately excluded the fees attributable to the long distance license agreement from its base amount. Staff disagrees with MCIM's assertion that the only relevant question is whether a provider holds a certificate. Regardless of whether the provider is a CTP, both Chapter 283 and Commission rules clearly define access lines within the framework of Chapter 283 in terms of the transmission and delivery of local exchange service. In other words, contrary to MCIM's assertion, the statute and

rules both take into consideration the type of service being provided (local exchange) and the lines over which that service is delivered (access lines). Allowing providers to include interexchange lines under this framework would subvert the intent of the law and the policy of the Commission.

Should MCIM wish a more formal resolution of this issue, MCIM may pursue other options available under Commission rules, including, but not limited to, filing a formal complaint. Such a formal complaint would be litigated before the State Office of Administrative Hearings (SOAH), with the SOAH proposal brought before the Commission itself for a final decision.

Sincerely,

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