

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Adoption by Brooks Fiber)
Communications of Missouri, Inc., of the Verizon/ICG) **Case No. CK-2002-1146**
Telecom Group, Inc., Interconnection Agreement.)

ORDER APPROVING INTERCONNECTION AGREEMENT

This order approves the Interconnection Agreement executed and filed jointly by Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest.

On June 18, 2002, Brooks filed a notice of adoption of the interconnection agreement between Verizon California Inc. f/k/a GTE California Incorporated and ICG Telecom Group, Inc., pursuant to the BA/GTE Merger Conditions released by the Federal Communications Commission on June 16, 2000, in CC Docket No. 98-184.

Brooks is a competitive local exchange telecommunications company under a certificate granted and tariffs approved by the Commission. Verizon Midwest is an incumbent local exchange company certificated to provide service in Missouri.

On July 1, 2002, the Commission issued an order making Verizon Midwest a party to this case and directing any party wishing to request a hearing to do so no later than July 22, 2002. No requests for hearing were filed.

On July 18, 2002, Brooks and Verizon Midwest jointly filed a Substitute Interconnection Agreement and withdrew the adoption notice and the original interconnection agreement, Exhibits 2 and 3 to Brooks's Notice of Adoption filed on

June 18, 2002. The new Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.¹ The Agreement would permit Brooks to interconnect with Verizon Midwest and to provide resold and facilities-based telecommunications services.

The Staff of the Commission filed a memorandum and recommendation on July 30, 2002, recommending that the Substitute Agreement filed on July 18, 2002, be approved.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection or resale agreement negotiated between telecommunications companies. The Commission may reject an interconnection or resale agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

The Staff memorandum recommends that the Substitute Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the application, the supporting documentation, and Staff's recommendation. Based upon that review, the Commission finds that the

¹ See 47 U.S.C. § 251, *et seq.*

Substitute Agreement meets the requirements of the Act in that it does not discriminate against a nonparty carrier and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

Modification Procedure

The Commission has a duty to review all interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.² In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.³ This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.⁴

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

² 47 U.S.C. § 252.

³ 47 U.S.C. § 252(h).

⁴ 4 CSR 240-30.010.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained in the Commission's Data Center.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996⁵ is required to review negotiated interconnection

⁵ 47 U.S.C. § 252(e)(1).

agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience and necessity.⁶ Based upon its review of the Substitute Agreement between Brooks and Verizon Midwest and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That the Agreement between Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest, filed on July 18, 2002, is approved.
2. That any changes or modifications to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That this order shall become effective on August 15, 2002.

⁶ 47 U.S.C. § 252(e)(2)(A).

4. That this case may be closed on August 16, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Nancy Dippell, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 5th day of August, 2002.