LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

March 3, 2003

Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

FILED[3]
MAR 0 3 2003
Missouri Public Service Commission

Re: Case No. IO-2003-0223
- Peace Valley Telephone Company, Inc.

Dear Mr. Roberts:

Enclosed please find an original and eight copies of a Response to Order Directing Filing on behalf of Peace Valley Telephone Company, Inc.

Please see that this is filing is brought to the attention of the appropriate Commission personnel. If there are any questions regarding this matter, please direct them to me at the above number. Otherwise, I thank you in advance for your attention to and cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

WRE/da
Enclosure
cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Peace Valley Telephone Company, Inc. for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996	)))	Case No. IK-2003-0223

RESPONSE TO *ORDER DIRECTING FILING*

COMES NOW Peace Valley Telephone Company, Inc. ("Company") and states to the Missouri Public Service Commission ("Commission") as follows:

INTRODUCTION AND SUMMARY

1. **The Commission's *Order*.** The Commission has directed the Company to "file a pleading to explain its understanding of the difference between an interconnection agreement and traffic termination agreement." In addition, the Commission has directed the Company to "explain the harm it will suffer if the Commission does not alter its order."

2. **Agreement Reached and Relief Sought**. Company's *Application* seeks Commission approval of a "Traffic Termination" Agreement, and the Agreement between Company and Verizon Wireless is clearly marked in boldfaced, underlined type as a **TRAFFIC TERMINATION AGREEMENT**. The express terms of the Agreement explain that it is a traffic termination agreement executed pursuant to 47 U.S.C. 251(b)(5) and "**is not an interconnection agreement under 47 U.S.C. 251(c)**." *See* Agreement, Section 20.1 (page 17 of 20) (emphasis added).

3. **Harm and the Rural Exemption**. The Telecommunications Act of 1996 distinguishes interconnection agreements under §251(c) and reciprocal compensation arrangements for the exchange of local telecommunications under §251(b)(5). The Traffic Termination Agreement is a reciprocal compensation agreement under §251(b)(5), *not an interconnection agreement under §251(c). This distinction is* important because Company seeks to maintain its rural exemption under §251(f).

RESPONSE

4. **There is no direct interconnection between Company and Verizon Wireless**. Although there is no direct interconnection between Company and Verizon Wireless, wireless traffic may be delivered indirectly to Company through the facilities of another local exchange carrier. In other words, wireless traffic "terminates" to *Company's exchanges in the absence of a direct interconnection or an interconnection* agreement. *See* Agreement (page 1 of 20). Therefore, the Traffic Termination Agreement establishes the terms and conditions for telecommunications traffic that is exchanged between the two companies in the absence of a direct interconnection.

5. **Reciprocal Compensation for termination of traffic under 251(b)(5)**. The Telecommunications Act of 1996 ("the Act") requires all local exchange carriers, such as Company, to "establish reciprocal compensation arrangements for the transport and ***termination*** of telecommunications." 47 U.S.C. 251(b)(5) (emphasis added). The Traffic Termination Agreement between Company and Verizon Wireless satisfies this requirement by establishing the terms and conditions for wireless traffic that terminates to Company's exchanges.

6. **The BPS *Order***. On February 3, 2003, the Commission correctly recognized that Traffic Termination Agreements "**cover traffic originated by, and under the responsibility of one of the parties and terminated to the other party without direct interconnection of the parties' networks**." *Application of BPS Telephone Company for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996*, Case No. IO-2003-0207, *Order Approving Traffic Termination Agreement* (emphasis added) (see Attachment A).

7. **The *Application* expressly seeks approval of a Traffic Termination Agreement**. The caption, title, first sentence, and conclusion of Company's *Application* all seek approval of a "Traffic Termination" Agreement. Company's *Application* explained that the Traffic Termination Agreement "is not an interconnection agreement under Section 251(c), and [Company] has not waived its Section 251(f)(1) rural exemption."

8. **The express terms of the Traffic Termination Agreement establish that it is not an Interconnection Agreement under Section 251(c) of the Act**. The Traffic Termination Agreement between Company and Verizon Wireless expressly states:

> **This Agreement is not an interconnection agreement under 47 U.S.C. 251(c)**. The Parties acknowledge that [Company] may be entitled to a rural exemption as provided by 47 USC 251(f), and [Company] does not waive such exemption by entering into this Agreement.

Section 20.1 (page 17 of 20) (emphasis supplied).

9. **Company has not waived its rural exemption**. Company is a "Rural Telephone Company" as defined by federal law, and the Act establishes an exemption for Rural Telephone Companies from the interconnection requirements of Section 251(c). Thus, as a rural carrier, Company is not required to meet the interconnection requirements of Section 251(c). Company and Verizon Wireless sought to highlight in Section 20.1 of their Agreement that, while they are submitting a Traffic Termination Agreement pursuant to Section 251(b)(5) to this Commission for approval, **it is not an interconnection agreement under Section 251(c), and Company has not waived its Section 251(f)(1) rural exemption**.

10. **Harm Avoided**. Company seeks to maintain its rural exemption, and thus the distinction between an Interconnection Agreement and a Traffic Termination Agreement is important. Granting the Company's *Motion for Correction* will clarify that Company has not waived its rural exemption under 47 U.S.C. § 251(f).

11. **Consistency of Decisions**. Granting Company's *Motion for Correction* will also further consistency among Commission decisions such as the *Order Approving Traffic Termination Agreement* for BPS Telephone Company and the *Order* in this case.

12. **Company's *Motion* is unopposed**. No Party has opposed Company's *Motion for Correction*.

WHEREFORE, Company respectfully requests that the Commission: (1) grant its *Motion for Correction*, (2) issue an *Amended Order* making the appropriate corrections requested in Company's *Motion*, and (3) grant such other relief as is reasonable in the circumstances.

Respectfully submitted,

By Brian T. McCartney

W.R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
(573) 635-7166
(573) 634-7431 (FAX)

Attorneys for Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 3rd day of March, 2003, to the following parties:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Verizon Wireless
Regulatory Counsel
1300 I (Eye) Street, N.W.
Suite 400 West
Washington, D.C. 20005

Verizon Wireless
John L. Clampitt
2785 Mitchell Drive, MS 7-1
Walnut Creek, CA 94598

Brian T. McCartney

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Application of BPS Telephone Company for for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996.	)))	Case No. IO-2003-0207

ORDER APPROVING TRAFFIC TERMINATION AGREEMENT

This order approves the Traffic Termination Agreement executed by the parties and filed by BPS Telephone Company.

On December 18, 2002, BPS Telephone Company filed an application with the Commission for approval of a Traffic Termination Agreement with Verizon Wireless, LLC. The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.[1] The Agreement will cover traffic originated by, and under the responsibility of one of the parties and terminated to the other party without direct interconnection of the parties' networks. BPS holds a certificate of service authority to provide basic local telecommunications services in Missouri.

Although Verizon is a party to the Agreement, it did not join in the application. On December 20, 2003, the Commission issued an order making Verizon a party in this case and directing that any party wishing to request a hearing do so no later than January 9, 2003. No requests for hearing were filed.

The Staff of the Commission filed a memorandum on January 24, 2003, recommending that the Agreement be approved.

---

[1] See 47 U.S.C. §251, et seq.

Discussion

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. The Commission may reject an agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity.

The Staff of the Commission recommends in its memorandum that the 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 of amendments to the Commission for approval.

Findings of Fact

The Missouri Public Service Commission, having consider 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 concludes that the 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 of amendments to the Commission for approval pursuant to the procedure set out below.

Modification Procedure

The Commission has a duty to review all resale and 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 modification to these agreements. The Commission has 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.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be submitted 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 modification made will be maintained in the Commission's Data Center.

---

[2] 47 U.S.C. §252.

[3] 47 U.S.C. §252(h)

[4] 4 CSR 240-30-010

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 and its effects 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.

Conclusion 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 1996,[5] is required to review negotiated interconnection 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 Agreement between BPS and Verizon and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

---

[5] 47 U.S.C. §252(e)(1).

[6] 47 U.S.C. §252(e)(2)(A).

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 Traffic Termination Agreement between BPS Telephone Company and Verizon Wireless, LLC, filed on December 18, 2002, shall be approved.

2. That any changes or modification 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 February 13, 2003.

4. That this case may be closed on February 14, 2003.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Law Judge

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of February, 2003.