

NW

()

[illegible]

Procedural History

On January 5, 2000, Missouri Telecom, Inc. (Applicant) filed with the Missouri Public Service Commission (Commission) an Interconnection Agreement (Agreement) and Application for Approval of Interconnection Agreement (Application) under the provisions of the Telecommunications Act of 1996 (the Act). The Commission issued its Order Directing Notice and Making Southwestern Bell Telephone Company (SWBT) a Party on January 13, 2000, directing any party wishing to request a hearing or participate without intervention to do so no later than February 2, 2000, and also making SWBT a party. No applications to participate or requests for hearing were filed. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Also on January 13, 2000, the Commission issued a Notice of Deficiency, stating that the Commission could not proceed with this case until the Applicant complied with Commission Rule 4 CSR 240-2.060(1)(A) which requires applications to include the address of the applicant; Commission Rule 4 CSR 240-2.060(1)(B) which requires a statement of the character of the business performed by the applicant; Commission Rule 4 CSR 240-2.060(1)(C) which requires each application to include contact information for the person to whom correspondence, communications and orders and decisions can be sent to; and Commission Rule 4 CSR 240-2.060(4)(A) which requires evidence of the applicant's incorporation. On January 19, 2000, Applicant filed its supplement to its application, curing all four of these deficiencies.

On January 19, 2000, SWBT filed its Statement of Position. SWBT stated that the agreement submitted in this case was entered into pursuant to Section 252(i) of the Act and is nearly identical to previous SWBT and AT&T of the Southwest, Inc. (AT&T) interconnection agreements. SWBT stated that the agreement submitted in this case was not negotiated and that SWBT signed the agreement only because it is required to do so under the Act and also in light of the Commission's decision in case number TO-98-200, the MCI mediation and arbitration case. SWBT stated that the Commission's order in the initial and second AT&T arbitrations are the subject of appeals. SWBT stated that in the event of any amendment of the underlying SWBT and AT&T "arguments¹," or any legal action which affects the underlying SWBT and AT&T agreements which

revises or modifies SWBT's rights or obligations in the AT&T interconnection agreements, then the relevant provisions of this interconnection agreement should be deemed automatically modified², amended or conformed to be consistent with such subsequent development.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has the authority to approve an interconnection agreement negotiated between an incumbent local exchange carrier and a new provider of basic local exchange service. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

On February 7, 2000, the Staff of the Commission (Staff) filed a Memorandum that recommended that Applicant and SWBT be granted approval of the facilities-based interconnection agreement (i.e., the Agreement). Staff stated that the Agreement meets the limited requirements of the Act. Specifically, Staff stated that the Agreement does not appear to discriminate against telecommunications carriers not party to the Agreement, and the Agreement does not appear to be against the public interest, convenience or necessity. Staff further recommended that the Commission direct SWBT and Applicant to submit any modifications or amendments to the Agreement to the Commission for approval. This

1 It is assumed that SWBT intended to use the word "agreements."

2 There is no provision in the law for "automatic" modifications of interconnection agreements.

condition has been applied in prior cases where the Commission has approved similar agreements.

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 and the supporting documentation, including Staff's recommendation. Based upon that review, the Commission finds that the Agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier and also finds that 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 resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. 252. In order for the Commission's review and approval to be effective, the Commission must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. 252(h). 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 pursuant to Commission Rule 4 CSR 240-30.010.

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, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Unless one has already been provided, SWBT and Applicant shall provide the Staff with a final copy of the interconnection agreement with all pages, including the appendices, numbered seriatim in the lower right-hand corner. Simultaneously therewith, the parties shall file a pleading notifying the Commission that such copy has been provided. Modifications to an agreement must be submitted to the Staff for review. When approved, 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. The official record of the original Agreement and all the modifications made will be maintained by the Staff in the Commission's tariff room.

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 modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. 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 1996 (47 U.S.C. 252(e)(1)), is required to review negotiated resale or 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 under Section 252(e)(2)(A). Based upon its review of the interconnection agreement between SWBT and Applicant and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the Interconnection Agreement between Southwestern Bell Telephone Company and Missouri Telecom, Inc., filed on January 5, 2000, is approved.

2. That any changes or modifications to the Interconnection Agreement between Southwestern Bell Telephone Company and Missouri Telecom, Inc., filed on January 5, 2000, shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

3. That this order shall become effective on February 22, 2000.

4. That this case may be closed on February 23, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant to
4 CSR 240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 10th day of February, 2000.