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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Birch)
Telecom of Missouri, Inc., for Approval)
of Interconnection Agreement under the)
Telecommunications Act of 1996)
Case No. TO-2000-6

ORDER APPROVING INTERCONNECTION AGREEMENT

Birch Telecom of Missouri, Inc. (Birch) filed a petition with the Commission on July 2, 1999, for approval of its interconnection agreement (the Agreement) with Southwestern Bell Telephone Company (SWBT) under the provisions of the federal Telecommunications Act of 1996 (the Act). On July 12, the Commission issued notice of application and directed any party wishing to request a hearing or to participate without intervention to file its application no later than August 2. Further, SWBT was joined as a party and the Staff of the Missouri Public Service Commission (Staff) was directed to file a memorandum advising its position regarding this agreement by September 10.

No applications to intervene or to participate were filed. No comments or requests for hearing were filed. Staff filed a memorandum on August 9 recommending the Agreement be approved. 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 requested permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection agreement negotiated between an incumbent local exchange company (LEC) 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.

Staff of the Missouri Public Service Commission (Staff) stated in its memorandum that the terms and rate of this Agreement are similar to those contained and approved in other interconnection agreements, with a specific reference to Case No. TO-99-168, the interconnection agreement between Northpoint Communications, Inc. and SWBT. The application stated that the interconnection agreement was negotiated and entered into by SWBT and Birch pursuant to Section 252(A)(1) of the federal Telecommunications Act. Further, the applicant stated that the interconnection agreement was executed on June 16, 1999, and that there are no outstanding issues between SWBT and Birch that need assistance of mediation or arbitration.

On August 18, SWBT filed a Statement of Position indicating that the interconnection agreement which is the subject of Birch's application was arrived at pursuant to Section 252(i) of the Telecommunications Act "and is an 'MFN' into the SWBT/AT&T of the

Southwest, Inc. (AT&T) Missouri interconnection agreement." SWBT stated that if the Commission approves the interconnection agreement in this case, this Agreement will replace the arbitrated agreement between SWBT and Birch approved by the Commission on June 25, 1998. SWBT stated that it signed the agreement in this case only because it is required to do so under the federal Telecommunications Act and in light of the Commission's decision in TO-98-200 (MCI mediation and arbitration). SWBT stated that the underlying SWBT/AT&T agreement was a product of negotiations and arbitrations in Commission Case Nos. TO-97-40 and TO-97-67 (the initial AT&T arbitration) and Case No. TO-98-115 (the second AT&T arbitration). SWBT noted that the Commission orders in the initial and second AT&T arbitrations are the subject of appeals. SWBT stated that

. . . [I]n the event of any amendment of the underlying SWBT/AT&T agreement, or any administrative, regulatory, legislative or judicial order, rule, opinion, or other legal action affecting the underlying SWBT/AT&T arguments or any subsequent agreements between SWBT and AT&T, required by or resulting from such legal actions, which revises or modifies SWBT's rights and/or obligations pertaining to any matter contained in the AT&T interconnection agreement (a subsequent development), the relevant provisions of the SWBT/Birch agreement should be deemed automatically modified, amended, or conformed to be consistent with such subsequent development.

SWBT requested the Commission approve the SWBT/Birch interconnection agreement subject to the position stated in its filing of August 18.

Staff stated in its recommendation that the Agreement meets the limited requirements of the Act in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest, convenience or necessity. Staff recommended approval of the Agreement provided that all modifications to the

Agreement be submitted to the Commission for approval. This 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, the supporting documentation, SWBT's statement, and Staff's recommendation. Based upon that review the Commission has reached the conclusion that the Agreement meets the requirements of the Act in that it does not unduly 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

This Commission's first duty is 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 role of 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. 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.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. 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. Staff will date-stamp the pages when they are inserted into the Agreement. The Telecommunications Staff will maintain the official record of the original agreement and all the modifications made 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 interconnection or resale 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 Agreement between Birch and SWBT, 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 Birch Telecom of Missouri, Inc. and Southwestern Bell Telephone Company filed on July 2, 1999 is approved.

2. That Birch Telecom of Missouri, Inc. shall file a copy of the interconnection agreement with the Staff of the Missouri Public

Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than September 10, 1999. Birch Telecom of Missouri, Inc. shall file on the same date a notice in the official case file advising the Commission that the Agreement has been submitted to Staff as required.

3. That any changes or modifications to this Agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

4. That the Commission, by approving this agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the requirements of the competitive checklist found in 47 U.S.C. § 271.

5. That this order shall become effective on September 10, 1999.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, 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 31st day of August, 1999.

R E C E I V E D

SEP 01 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION