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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)
KMC Telecom III, Inc., for Approval of an) Case No. TO-2000-307
Interconnection Agreement Under the Tele-)
communications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

On October 29, 1999, KMC Telecom III, Inc. (KMC), filed an application with the Commission for approval of an interconnection agreement (the Agreement) with Southwestern Bell Telephone Company (SWBT). The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. The Agreement would permit KMC to resell local telecommunications services. Although SWBT is a party to the Agreement, it did not join in the application. On November 2, 1999, the Commission issued an order making SWBT a party in this case and directing any party wishing to request a hearing or to participate without intervention to do so no later than November 22, 1999. No applications to participate or requests for hearing were filed.

On November 4, 1999, SWBT filed a Statement of Position requesting that the Commission approve the SWBT/KMC Agreement subject to SWBT's position that the provisions of KMC's interconnection agreement should be deemed automatically modified if those provisions in the SWBT/AT&T interconnection agreement, the agreement KMC is adopting, are modified by ongoing legal actions.

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, the Commission may grant the relief requested based on the verified application.

The Staff of the Commission (Staff) filed a recommendation and a memorandum on December 6, 1999, recommending that the Agreement be approved.

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 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 November 12, 1999, KMC filed a Motion for Expedited Treatment. In its motion, KMC indicated that it filed its basic local service tariff concurrent with the interconnection application because KMC desires to be in a position to provide service at the earliest possible time. KMC noted that its proposed basic local service tariff, in Case No. TT-2000-310, carries an effective date of December 13, 1999, which would permit KMC to meet its target service date of December 15, 1999. On November 22, 1999, the Commission

issued an order directing Staff to expedite its consideration of the application.

On December 6, 1999, the Staff filed a Memorandum that recommends that the Commission approve the Agreement. 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. Staff recommended that the Commission direct the parties to submit any further modifications or amendments 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, 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

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 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.

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 official record of the original agreement and all the modifications made will be maintained by the Telecommunications 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 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 KMC 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 KMC Telecom III, Inc., and Southwestern Bell Telephone Company, filed on October 29, 1999, is approved.

2. That the parties shall file an executed copy of this Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim at the bottom of the page, no later than December 20, 1999. On the same date, the parties shall file 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 this order shall become effective on December 16, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, 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 December, 1999.

