

MP

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Business Telecom, Inc.)	
d/b/a BTI's Application for Approval of)	
Interconnection Agreement under the)	<u>Case No. TO-2000-636</u>
Telecommunications Act of 1996 with)	
Southwestern Bell Telephone Company)	

ORDER APPROVING INTERCONNECTION AGREEMENT

On April 11, 2000, Business Telecom, Inc., d/b/a BTI (BTI) filed an application for approval of an Interconnection Agreement under the provisions of the Telecommunications Act of 1996 (the Act). The proposed interconnection agreement is between BTI and Southwestern Bell Telephone Company (SWBT). Although SWBT is a party to the interconnection agreement, it did not join in the Application. On April 14, the Commission issued an order making SWBT a party in this case and directing any party wishing to request a hearing or participate without intervention to do so no later than May 4. No applications to participate or requests for hearing were filed. The requirement for a hearing is met when the opportunity for a 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 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 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 May 17, the Staff of the Public Service Commission (Staff) filed a Staff Recommendation and Memorandum that recommends that the Commission approve the submitted interconnection agreement. Staff stated in its recommendation that the agreement meets the limited requirements of the Act in that it does not appear to discriminate against telecommunications carriers not party to the agreement, 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 are 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 and the supporting documentation, including Staff's recommendation. Based upon that review,

(the Commission has concluded that the resale 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 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 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 are required to provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. The copy of the agreement submitted with the application meets this requirement. 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 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, 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 Business Telecom, Inc., d/b/a BTI and Southwestern Bell Telephone Company, filed on April 11, 2000, is approved.
2. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.
3. That this order shall become effective on May 30, 2000.

4. That this case may be closed on May 31, 2000.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Morris L. Woodruff, 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 19th day of May, 2000.

RECEIVED
MAY 19 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION