

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter Of the Adoption by ALLTEL)	
Communications, Inc. of an Interconnection)	
Agreement between Broadspan Communications,)	<u>Case No. TO-2000-674</u>
Inc. d/b/a Primary Networks and)	
Southwestern Bell Telephone Company)	
under the Telecommunications Act of 1996)	

ORDER APPROVING INTERCONNECTION AGREEMENT

On April 24, 2000, ALLTEL Communications, Inc. (ALLTEL) requested approval of its adoption of the existing Interconnection Agreement (Agreement) between Broadspan Communications, Inc. d/b/a/ Primary Network Communications (Broadspan) and Southwestern Bell Telephone Company (SWBT) under the provisions of the Federal Telecommunications Act of 1996 (the Act). ALLTEL also filed a Motion for Expedited Treatment on April 24 requesting that the Commission approve the adoption of the Interconnection Agreement on or before May 19, 2000.

ALLTEL stated that the Broadspan-SWBT interconnection agreement was approved by the Commission on August 12, 1998 in Case No. TO-98-518. ALLTEL also stated that the executed interconnection agreement between ALLTEL and SWBT is attached and incorporated by reference as Exhibit B. The interconnection agreement between ALLTEL and SWBT was executed on April 19 and April 20, 2000, respectively. ALLTEL stated that the Agreement complies with Section 252(e) of the Act because the adopted agreement is consistent with the public interest, convenience

and necessity and does not discriminate against any telecommunications carriers.

An Order Directing Notice and Making SWBT a Party was issued by the Commission on May 10, 2000, requiring any party who wanted to request a hearing or apply to participate without intervention to file a request by May 31, 2000. The Staff of the Missouri Public Service Commission (Staff) was directed to file a memorandum advising its position regarding this agreement by June 30, 2000. On May 11, 2000, an Order Directing Filing was issued requesting that Staff inform the Commission if it would be able to expedite the filing of its recommendation for filing before May 19, 2000. On May 12, 2000, Staff filed its recommendation in lieu of reporting when the recommendation could be filed. Staff recommended the Agreement be approved.

On May 30, 2000, SWBT filed its Statement of Position indicating to the Commission that this Agreement was adopted under Section 252(i) of the Act and was not a negotiated agreement pursuant to Section 252(e). SWBT stated that it only signed the Agreement because it believes that it is required to do so under the Act and in light of the Commission's decision in TO-98-200 (MCI Mediation and Arbitration). SWBT stated that a party adopting an agreement pursuant to Section 252(i) of the Act cannot obtain greater rights than the parties to that agreement, and therefore, the provisions of the SWBT/ALLTEL interconnection agreement will be automatically modified, amended or conformed to be consistent with subsequent developments resulting from relevant legal actions which affect the original interconnection agreement adopted. SWBT requested that the Commission

approve the SWBT/ALLTEL interconnection agreement subject to the position outlined in its Statement of Position.

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 requested 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 (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.

ALLTEL stated in its application that because it is adopting the interconnection agreement made between Broadspan and SWBT, which has already been approved by the Commission, implementation of the submitted agreement will be consistent with the public interest. Staff stated in its recommendation that the terms and rate of this Agreement are similar to those contained and approved in other interconnection agreements, with a specific reference to the interconnection agreement between Broadspan and SWBT approved in Case No. TO-98-518.

The 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 and that the Commission direct ALLTEL to provide the Telecommunications Staff with a copy of the Agreement with the pages numbered seriatim in the lower right-hand corner. 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

This 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.

ALLTEL 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). Section 252(i) of the Telecommunications Act of 1996 (the Act) permits any requesting telecommunications carrier to adopt any interconnection services or network element provided for in an interconnection agreement upon the same terms and conditions as those provided in the original approved agreement. Based upon its review of the Agreement between ALLNET and SWBT, and its findings of fact, the Commission concludes that adoption of the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That ALLTEL Communications, Inc.'s request to adopt the existing Interconnection Agreement between Broadspan Communications, Inc. d/b/a/ Primary Network Communications and Southwestern Bell Telephone Company is granted.

2. That ALLTEL Communications, Inc. and Southwestern Bell Telephone Company shall file a copy of the adopted agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than June 15, 2000. The ALLTEL Communications, Inc. and Southwestern Bell Telephone Company 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 ALLTEL Communications, Inc.'s Motion for Expedited Treatment filed on April 24, 2000, requesting expedited treatment of its application, is granted in part and this Order Approving Interconnection Agreement has been issued on an expedited basis. Because the Commission did not approve this interconnection agreement on or before May 19, 2000, that part of the Motion for Expedited Treatment is moot.

5. That this order shall become effective on June 15, 2000.

BY THE COMMISSION



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 5th day of June, 2000.

RECEIVED
JUN 05 2000
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION