

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of December, 1999.

Application of Advanced Communications Group,)
Inc. and Feist Long Distance Service, Inc.)
for Approval to Assign an Interconnection) Case No. TO-2000-274
Agreement)

ORDER APPROVING INTERCONNECTION AGREEMENT

Procedural History

Advanced Communications Group, Inc. (ACG) and its wholly owned subsidiary, Feist Long Distance Service, Inc. (Feist) (jointly, Applicants), filed a Joint Application with the Missouri Public Service Commission (Commission) on October 13, 1999, for approval of the assignment of an interconnection agreement (Agreement) between ACG and Southwestern Bell Telephone Company (SWBT) under the provisions of the Federal Telecommunications Act of 1996 (the Act), which agreement was approved on February 10, 1999, in case number TO-99-291.

The Commission issued an Order and Notice on October 22, 1999, ordering, *inter alia*, that SWBT be made a party to this case and also directing any party wishing to request a hearing or participate without intervention to do so no later than November 12, 1999. 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.

ACG was granted a certificate of service authority to provide interexchange and local exchange telecommunications service on March 23, 1998, in case number TA-98-332. ACG was granted a certificate of service authority to provide basic local exchange telecommunications service on April 23, 1999.

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 carrier (ILEC) and a new provider of basic local exchange service. Thus, the Commission also has the authority to approve a modification to an interconnection agreement under the same statute. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

On December 2, 1999, the Staff of the Commission (Staff) filed a Memorandum that recommends that the Commission approve the submitted assignment of the interconnection agreement. Staff stated in its recommendation that SWBT had not filed any opposition to the assignment of the Agreement. Staff stated that according to the Joint Application,

ACG has elected to focus on its directory publishing business and plans to exit the telecommunications business. Staff stated that therefore, ACG no longer requires an interconnection agreement and requests Commission approval to transfer its interconnection agreement with SWBT to ACG's subsidiary, Feist. Staff stated that no customers or services will be affected by the assignment of the Agreement because ACG has no customers in Missouri.

Staff also stated that the Agreement contained an assignment clause that allows either party to assign the agreement to a corporate affiliate or an entity under its common control. Staff stated that the clause required that either party notify the other in writing not less than sixty (60) days in advance of the anticipated assignment. Staff stated that ACG had provided a copy of the notice it sent to SWBT on September 2, 1999.

Staff stated that it believes that the assignment to Feist of ACG's rights and obligations under its interconnection agreement with SWBT is in the public interest and should be approved. Staff stated that the assignment does not change the terms of the Agreement. Staff stated that it recommends the Commission issue an order to approve the assignment of ACG's Agreement with SWBT at its earliest convenience.

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 reached the conclusion that the assignment of the interconnection 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 subsequent 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. 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 ACG shall provide the Staff with a final copy of the resale or 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 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 ACG 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 Request for Approval to Assign Advanced Communications Group, Inc.'s interest in the Interconnection Agreement between Southwestern Bell Telephone Company and Advanced Communications Group, Inc., filed on October 13, 1999, is approved.

2. Unless one has already been provided, Southwestern Bell Telephone Company and Advanced Communications Group, Inc. shall submit to the Staff a final copy of the assignment of the interconnection agreement with all pages, including the appendices, numbered seriatim in the lower right-hand corner, no later than December 24, 1999. The

parties shall file on the same date a notice in the official case file advising the Commission that the agreement has been submitted to the Staff as required.

3. That any subsequent 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 24, 1999.

5. That this case may be closed on December 27, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Hopkins, Senior Regulatory Law Judge

R E C E I V E D

DEC 14 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION