

10

In the Matter of the Application of DSLnet)
Communications, LLC, for Approval of an Inter-) Case No. TO-2000-54
connection Agreement Under the Telecommunica-)
tions Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

DSLnet Communications, LLC (DSLnet), filed an Application with the Commission on August 30, 1999, for approval of an interconnection agreement under the provisions of the Telecommunications Act of 1996 (the Act). The proposed interconnection agreement is between DSLnet and Southwestern Bell Telephone Company (SWBT). Although SWBT is a party to the interconnection agreement, it did not join in the Application. The Commission joined SWBT as a party by Order on August 3, 1999.

On July 30, 1999, SWBT filed a Statement of Position in which it points out that the interconnection agreement with DSLnet was adopted by DSLnet pursuant to Section 252(i) of the Act and was not negotiated. SWBT indicates that the underlying agreement that DSLnet is adopting is still subject to appeal, and SWBT asserts that its Agreement with DSLnet should be deemed automatically modified to conform to any changes in the underlying agreement that might result from the ongoing litigation. SWBT requests that the Commission approve the SWBT/DSLnet agreement subject to its position set forth in its Statement of Position.

The Commission issued an order on August 3, 1999, directing any party wishing to request a hearing or participate without intervention to do so no later than August 23, 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.

On August 30, 1999, DSLnet filed a Motion to Amend Exhibit stating that the interconnection agreement had been modified. The modification to the agreement was executed on August 6, 1999. DSLnet requested that the agreement be approved as modified.

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 discriminates against nonparties or is inconsistent with the public interest, convenience and necessity.

On September 15, 1999, the Staff of the Public Service Commission (Staff) filed a Memorandum recommending that the Commission approve the submitted interconnection agreement as amended. Staff

stated in its recommendation that the Agreement meets the limited requirements of the Act in that it does not appear to discriminate against nonparties, and does not appear to be against the public interest.

The Commission has considered the application and the supporting documentation, including Staff's recommendation. Based upon that review, the Commission has concluded that the interconnection agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and that 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 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 have provided 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 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.

Conclusion

The Commission, under the provisions of Section 252(e)(1) of the Act, (47 U.S.C. § 252(e)(1)), is required to review negotiated resale agreements. It may only reject an 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 DSLnet 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 motion to amend exhibit filed by DSLnet Communications, LLC, on August 30, 1999, is granted.
2. That the Interconnection Agreement between DSLnet Communications, LLC, and Southwestern Bell Telephone Company filed on July 27, 1999, is approved.
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 October 13,
1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Nancy Dippell, Senior 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 29th day of September, 1999.

RECEIVED
SEP 29 1999
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION