

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 25th  
day of November, 1998.

In the Matter of the Adoption of the	)	
GTE/Ameritech Interconnection Agreement by	)	
Southwestern Bell Wireless, Inc.	)	<b><u>Case No. TO-99-93</u></b>
Pursuant to Section 252(i) of the	)	
Telecommunications Act of 1996.	)	

**ORDER DENYING MOTION TO REJECT AND APPROVING**  
**INTERCONNECTION AGREEMENT**

GTE Midwest Incorporated and GTE Arkansas Incorporated (collectively GTE) filed a document entitled Adoption of Interconnection Agreement on September 2, 1998. The pleading purports to inform the Commission that pursuant to Section 252(i) of the Telecommunications Act of 1996, Southwestern Bell Wireless, Inc. (SWBW) has notified GTE that it wishes to adopt the terms of the interconnection agreement between GTE and Ameritech Mobile Communications, Inc. (Ameritech). The agreement between GTE and Ameritech was approved by the Missouri Public Service Commission in Case No. TO-98-163, under the terms of Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. The document filed by GTE purports to inform the Commission that the interconnection agreement has been adopted but does not request that the Commission approve the interconnection agreement.

The Commission issued an Order and Notice on September 11, directing any party wishing to request a hearing or participate without intervention to do so no later than October 1. 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 November 10, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Reject Interconnection Agreement.

In this Motion, Staff argues that the interconnection agreement between GTE and SWBW should be rejected because the Adoption of Interconnection Agreement document filed by GTE does not actually submit the interconnection agreement to the Commission for approval under Section 252(e) of the Act.

SWBW filed a response to Staff's motion to reject the interconnection agreement on November 20. SWBW's response urges the Commission to treat the Adoption of Interconnection Agreement, the document filed by GTE, as a submission of the interconnection agreement for the Commission's approval. SWBW further requests that the Commission deny Staff's motion to reject and approve the interconnection agreement.

GTE filed its own response to Staff's motion to reject the interconnection agreement on November 20. GTE's response reiterates its contention that interconnection agreements adopted under Section 252(i) of the Act need not be submitted to the Commission for approval. GTE requests that the Commission deny Staff's motion to reject.

## 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.

Staff, in its motion to reject, correctly states that GTE has failed to actually submit the interconnection agreement to the Commission for approval. Instead, GTE seems to take the position that because SWBW is adopting the terms of an agreement that has already been approved by the Commission, it is not necessary to submit the agreement to the Commission for a second time. GTE's position does not find favor with the Commission.

GTE is correct that section 252(i) of the Act requires a local exchange carrier to make its previously executed interconnection agreements available to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. However, nothing in 252(i) would override section 252(e)(1) of the Act, which requires that interconnection agreements be submitted for approval to the State commission.

While Staff's motion to reject correctly states that GTE is required to submit the proposed interconnection agreement to the Commission for approval, Staff's suggestion that the interconnection agreement be rejected is not accepted. No purpose would be served by rejecting the interconnection agreement for GTE's failure to use the

correct words when submitting the agreement to the Commission. Whatever GTE's intent may have been when submitting this agreement to the Commission, the agreement will be reviewed by the Commission under section 252(e) of the Act.

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. The agreement will be approved provided that the agreement and all modifications to the agreement shall be 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. Based upon that review the Commission has reached the conclusion that the interconnection resale 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 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 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 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 resale agreement between GTE and SWBW 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 Staff's Motion to Reject Interconnection Agreement is denied.

2. That the Interconnection Resale Agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated and Southwestern Bell Wireless, Inc. filed on September 2, 1998, is approved.

3. That GTE Midwest Incorporated and GTE Arkansas Incorporated and Southwestern Bell Wireless, Inc. shall file a copy of the agreement which they are adopting with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than December 7, 1998. 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 Staff as required.

4. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

5. That this Order shall become effective on December 1, 1998.

**BY THE COMMISSION**

( S E A L )

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

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

Woodruff, Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION