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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 22nd
day of September, 1998.

In the Matter of the Application of GTE Midwest)
Incorporated and GTE Arkansas Incorporated for)
Approval of Interconnection Agreement with) Case No. TO-98-581
Max-Tel Communications, Inc. Pursuant to)
Section 252(e) of the Telecommunications Act of)
1996.)

ORDER APPROVING RESALE AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated (GTE) filed an application on June 25, 1998, for approval of a resale agreement (the Agreement) between GTE and Max-Tel Communications, Inc. (Max-Tel). The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. The Agreement would permit Max-Tel to resell basic local exchange service to residential and business end-users.

The Commission issued an Order and Notice on July 7 setting deadlines for parties wishing to request a hearing, or to file an application to participate without intervention, to do so no later than July 27. However, no requests for a hearing, applications to participate or comments were filed. The Staff of the Commission (Staff) filed a Memorandum on August 6 recommending that the Agreement be approved. 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.

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.

The Agreement lists the services available for resale and specifies the avoided cost discount rate of 25.4 percent and several nonrecurring charges, including charges for initial service orders, transfer of service charges, subsequent service order, customer service record research, resale line installation and outside facility connection. The Agreement specifies services which Max-Tel may resell without receiving a discount from GTE. Where GTE is the service provider, GTE will provide 911 Service as an element of local exchange services available for resale. The Agreement contains provisions for providing service to customers should Max-Tel fail to pay GTE, and provides for a Transfer of Service charge of \$16.00 per order. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

The initial term of this Agreement will be for two (2) years and thereafter the Agreement shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least thirty

(30) calendar days written notice of termination, which termination shall be effective at the end of the then current term.

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. Staff recommended approval of the Agreement. Staff's memorandum also recommended that the Commission direct the parties to submit any modifications or amendments to the Commission for approval. The Staff memorandum states that it "recommends the Commission direct *SWBT and Max-Tel* to submit any modifications or amendments to the Commission for approval" (emphasis added). Since SWBT is not a party to this resale agreement, it is clear that the Staff memorandum should have read "GTE and Max-Tel" instead. This condition regarding modifications or amendments 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 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. Approval is conditioned upon the parties submitting any further modifica-

tions or amendments to the Commission for approval pursuant to the procedure set out below.

Modification Procedure

This Commission's first duty is 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.

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 Max-Tel 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 resale agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated (GTE) and Max-Tel Communications, Inc., filed on June 25, 1998, is approved.

2. That the parties shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner, no later than October 5, 1998.

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 September 23, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Regulatory Law Judge

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COMMISSION COUNCIL
PUBLIC SERVICE COMMISSION