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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 16th
day of June, 1998.

In the Matter of the Joint Application of GTE)
Midwest Incorporated, GTE Arkansas Incorporated)
and Mark Twain Communications Company for) Case No. TO-98-410
Approval of an Interconnection Agreement and)
Unbundling Agreement Under the Telecommunica-)
tions Act of 1996.)

**ORDER APPROVING INTERCONNECTION, RESALE
AND UNBUNDLING AGREEMENT**

GTE Midwest Incorporated, GTE Arkansas Incorporated (collectively GTE), and Mark Twain Communications Company (MTCC) filed a joint application on March 30, 1998 requesting that the Missouri Public Service Commission approve an interconnection and unbundling agreement (Agreement) between them. The Agreement, which addresses interconnection and unbundling of network elements, was filed pursuant to Section 252(e)(1) of the Federal Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, *et seq.*

The Commission conditionally granted MTCC a certificate of service authority to provide basic local telecommunications services in the portions of Missouri that are currently served by GTE on May 19, 1998 in Case No. TA-98-305. MTCC's certificate will not become effective until it has obtained Commission approval for its basic local tariffs. MTCC filed its tariffs in TA-98-305 and the effective date has been suspended to July 28, 1998.

The Commission issued an Order and Notice on April 6 establishing a deadline of April 27 for interested parties to request permission to

participate without intervention or to request a hearing. No parties requested to participate without intervention or requested a hearing. The Commission's Order and Notice also directed parties wishing to file comments to do so by May 29 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by June 8. No comments were filed. Staff filed a Memorandum on June 8, 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 Federal Telecommunications Act of 1996 has authority to approve an interconnection or resale 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 describes the interconnection facilities and methods by which the parties may interconnect their networks, and contains provisions for the transmission and routing of telephone exchange service, exchange access service, and other types of traffic including E911 traffic. The Agreement also provides for binding arbitration of disputes between the parties.

The Agreement between GTE and MTCC is to become effective ten days after Commission approval. The term of the contract is two years from the effective date; thereafter the Agreement will be automatically renewed for successive one-year terms unless one of the parties gives 90 days notice of termination.

The Agreement permits several methods of interconnection, including mid-span fiber meet, physical and virtual collocation, and Special Access arrangement and/or Switched Transport for originating and terminating calls between the two parties. The parties have agreed to reciprocal compensation for transport and termination of local traffic, optional extended area service (EAS) traffic, intraLATA toll, and jointly provided interexchange traffic originating on each others' networks. The parties agreed that compensation rates for origination and termination of intraLATA toll and interexchange traffic would be based on the parties' intrastate or interstate access service tariffs as applicable. The parties have agreed to exchange traffic associated with third-party incumbent and competitive local exchange carriers, and wireless service providers, if there is an agreement in place between the originating carrier and the tandem and terminating companies.

GTE has agreed to make nondiscriminatory access to 911 service available for MTCC end users. GTE has also agreed to make available number portability and to comply with all federal, state and local statutes, regulations, rules, ordinances, judicial decisions and administrative rulings applicable to its performance under this Agreement.

GTE will provide access to the following categories of unbundled network elements (UNEs): Network Interface Devices (NIDs), Loop Elements,

Digital Cross-Connect Systems, Port and Local Switching Elements, Signaling Elements, and Data Switching.

The Agreement describes disconnection procedures should MTCC fail to pay any undisputed charges due to GTE. It calls for MTCC to notify its end users within five business days that their service may be disconnected for MTCC's failure to pay unpaid charges and that they must select a new provider of basic local exchange services. If MTCC fails to provide such notification, or if any of MTCC's end users fail to select a new provider within the five days, GTE will provide them with local exchange services. This Agreement differs from those filed by Southwestern Bell Telephone Company (SWBT) and approved by the Commission in the past in that GTE is not required to provide end users notice that their service has defaulted to GTE and that they have a right to choose another carrier.

The Staff stated in its Memorandum that this Agreement is substantially similar to agreements between GTE and Dial U.S. and between GTE and Digital Teleport, Inc. in Cases No. TO-97-297 and TO-98-388. Staff stated 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 provided that all modifications to the Agreement be submitted to the Commission for approval.

Findings of Fact

The Missouri Public Service Commission, having considered the joint application of the parties, including the agreement and its appendices, and the Staff's memorandum, 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 interconnection and unbundling agreement would meet the requirements of the Act in that it would not unduly discriminate against a nonparty carrier, and implementation of the Agreement would not be inconsistent with the public interest, convenience and necessity if the Agreement contained notice obligations similar to notice obligations under other approved agreements.

Although Staff stated that this Agreement is substantially similar to the agreement approved in TO-98-388, the Commission required additional notice language in TO-98-388 which does not appear here and was not addressed by Staff. In this case, if MTCC fails to pay undisputed charges, then GTE disconnects MTCC and provides service to MTCC's customers. The Agreement does not require GTE to notify the customers that it has taken over their service due to nonpayment by MTCC, and that the customers may choose a basic local exchange carrier other than GTE. If MTCC failed to inform customers of their rights prior to default to GTE, then customers could be receiving service from GTE without knowing of their right to choose another carrier. The Agreement also fails to require GTE to notify the Commission or the defaulted customers' interexchange carriers of the names of customers whose service has been switched to GTE.

The Commission finds that approval of the Agreement should be conditioned on the parties amending the Agreement by interlineation to include language that provides for the type of notice described above to be provided within five business days after customers are switched to GTE from MTCC.

The Commission finds that the Agreement does not specifically address the parties' handling of traffic involving third parties. The issue of identification and compensation for the termination of wireless traffic has been addressed in other cases involving GTE, and the Commission will follow a similar approach here.

In Case No. TO-97-533, the Commission approved an interconnection agreement between GTE and Sprint Spectrum L.P. even though GTE had not yet developed a method for tracking such traffic. Small incumbent local exchange carriers had complained that they needed this information so that they could properly bill for calls once compensation arrangements had been made with wireless carriers. Following Commission approval of the agreement in Case No. TO-97-533, GTE developed a report similar to the Cellular Usage Summary Report that SWBT generates pursuant to the Commission's order in Case No. TT-97-524. The Commission has not yet determined whether to require GTE to provide this summary to ILECs, or whether the summary's format as proposed is appropriate.

The Commission finds that the proposed Agreement between GTE and MTCC should be approved and that details concerning reporting of wireless carrier traffic should be worked out following approval, as the Commission ordered in Case No. TO-97-533. Finally, 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'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 interconnection 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 and unbundling agreement between GTE and MTCC, and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest, with the exception of the lack of notice by GTE in circumstances where MTCC customers are switched by default to GTE. Therefore, the Commission concludes that it should approve the Agreement but condition its approval on the parties filing an amendment by interlineation that includes the required notice to former MTCC customers, their IXCs and the Commission.

In order to avoid any disadvantage to third-party carriers, the Commission has previously required in Case No. TT-97-524 that SWBT make

available a Cellular Usage Summary Report that contains information sufficient to allow third-party providers to bill wireless carriers for wireless-originating traffic which terminates in the exchanges of those providers. The Commission is currently examining whether this obligation should apply equally to wireless traffic transiting GTE's network in Case No. TO-97-533. Therefore, the Commission concludes that GTE and MTCC should file written responses within 30 days of the effective date of this order, addressing possible solutions to the problem raised in Case No. TO-97-533 regarding termination of wireless traffic.

IT IS THEREFORE ORDERED:

1. That the interconnection and unbundling agreement between GTE Midwest Incorporated, GTE Arkansas Incorporated and Mark Twain Communications Company filed on March 30, 1998 is approved.

2. That the approval granted in Ordered Paragraph 1 is conditioned on the parties amending their Agreement by interlineation no later than June 19, 1998, to include the notice provisions described in this order.

3. That GTE Midwest Incorporated, GTE Arkansas Incorporated and Mark Twain Communications Company shall file a copy of the Agreement, as finally approved, with the Staff of the Missouri Public Service Commission. The copy shall have the pages numbered seriatim in the lower right-hand corner, and shall be filed no later than 10 days after Commission approval of the amendment to be filed in accordance with Ordered Paragraph 2.

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

5. That the parties shall file pleadings no later than July 16, 1998, that address how the Commission should resolve the issue of traffic reporting and compensation to incumbent local exchange carriers for wireless carrier traffic that transits the parties' networks.

6. That this order shall become effective on June 26, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Wickliffe, Deputy Chief Regulatory Law Judge

RECEIVED
JUN 16 1998
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION