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## ORDER APPROVING RESALE AGREEMENT

Sprint Missouri, Inc. d/b/a Sprint (Sprint) and Buy-Tel Communications, Inc. (Buy-Tel) filed a joint application with the Commission on June 29, 1998, for approval of a Master Resale Agreement (the Agreement). 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 Buy-Tel to resell local telecommunications services.

The Commission issued an Order and Notice on July 7 setting deadlines for parties wishing to participate without intervention to file applications to do so, or to file comments. No applications to participate or comments were filed.

The Staff of the Commission (Staff) filed a Memorandum on August 20, 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, 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.

Buy-Tel has not yet filed an application for a certificate of authority to provide basic local exchange telecommunications service on a resold basis. According to the Staff Memorandum, filed August 20, Buy-Tel's counsel has informed Staff that such an application will be filed following collation of the required financial data.

The Agreement was executed on May 28. The initial term for the Agreement shall extend until May 28, 1999, which is referred to as the Termination Date or the End Date. Thereafter the Agreement shall be subject to rules for notice, default, mediation, and continuation of services as established in the Agreement.

The Agreement provides that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve may be submitted to the Commission for resolution. In addition, the Agreement contains a provision that where Sprint is the owner or operator of the 911/E911 database, Sprint will maintain daily updating of 911/E911 information related to Buy-Tel's end users. Sprint will provide Buy-Tel a default arrangement/disaster recovery plan including an emergency backup number in case of massive trunk failures. The Agreement indicates

that Sprint will provide Buy-Tel the ability to order all available features on its switches at parity with what Sprint offers its own end-user customers (e.g., call blocking of 900 and 976 calls by line or trunk).

The Staff Memorandum recommends that the Agreement be approved. The Memorandum indicates that the Agreement is similar to one previously concluded between Sprint and Tin Can Communications Company, LLC, and approved by the Commission in Case No. TO-98-528 on July 21, 1998. However, the Memorandum also notes that this Agreement contains numerous typographical errors and has no Table of Contents. The Memorandum notes that counsel for the Parties are of the opinion that these variations do not alter the meaning or intent of the Agreement, and do not believe that the text requires modification prior to Commission approval.

The Staff indicates 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 are submitted to the Commission for approval. Staff also recommended that the Commission direct Sprint and Buy-Tel to submit a copy of the original Resale Agreement with an included title page and Table of Contents, and that all pages, including the attached Exhibits, be numbered seriatim at the bottom.

### **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 Master 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. Ordinarily the Commission would not approve an agreement riddled with typographical and other formatting errors. However, since the Staff recommendation was filed on August 20, and the Act requires Commission action by September 27, the Commission will approve the Agreement conditionally. In the future, it would be best if typographical and formatting errors are corrected before approval. The Commission concludes that approval of the Agreement should be conditioned upon the parties submitting any further modifications or amendments to the Commission for approval pursuant to the procedure set out below. The Commission notes that Buy-Tel has not yet been granted a certificate of service authority to provide basic local telecommunications services in Missouri and may not provide services until it has received such a certificate, and has approved tariffs on file with the Commission.

### **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 Sprint and Buy-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 Master Resale Agreement between Sprint Missouri, Inc. d/b/a Sprint and Buy-Tel Communications, Inc., filed on June 29, 1998, is approved.

2. That the parties shall file a compliant copy, including title page and table of contents, of the Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim at the bottom of the pages, no later than October 6, 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.

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 Buy-Tel Communications, Inc., shall not provide basic local telecommunications services in Missouri until it has been granted the necessary certificate of service authority, and has approved tariffs on file with the Commission.

5. That this Order shall become effective on September 23, 1998.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**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