

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**December 16, 1997**

**CASE NO: TO-98-41**

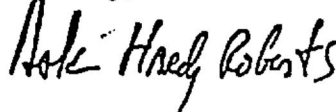
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W.R. England, III, Sondra B. Morgan, Brydon, Swearingen & England, PC  
P.O. Box 456, Jefferson City, MO 65102

**Enclosed find certified copy of ORDER in the above-numbered case(s).**

Sincerely,



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

**Uncertified Copy:**

Joel Margolis, 1505 Farm Credit Drive, McClean, VA 22102

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 December, 1997.

In the Matter of the Joint Application            )  
of GTE Midwest Incorporated and GTE                )  
Arkansas Incorporated and Dial Call, Inc.        )  
for Approval of Interconnection Agreement        )  
Under the Telecommunications Act of 1996.        )  
**CASE NO. TO-98-41**

**ORDER APPROVING INTERCONNECTION AGREEMENT**

GTE Midwest Incorporated and GTE Arkansas Incorporated  
(collectively GTE) and Dial Call, Inc. (Nextel Communications) (Nextel)  
filed a Joint Application on July 29, 1997, for approval of an  
interconnection agreement (the Agreement) between GTE and Nextel. 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 Missouri Public Service Commission (Commission) issued an  
order and notice on July 31, which established a deadline for applications  
to participate without intervention, and established a deadline for  
comments. The Small Telephone Company Group<sup>1</sup> and Fidelity Telephone  
Company and Bourbeuse Telephone Company (collectively Fidelity) filed  
timely applications for participation, which were granted on August 26.  
The Small Telephone Company Group and Fidelity filed comments on

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<sup>1</sup>For purposes of this proceeding, the Small Telephone Company Group is  
comprised of BPS Telephone Company, Cass County Telephone Company, Citizens  
Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone  
Cooperative, Inc., Ellington Telephone Company, Grand River Mutual Telephone  
Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo  
Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop  
Telephone Company, Mark Twain Rural Telephone Company, McDonald County  
Telephone Company, Miller Telephone Company, New Florence Telephone Company,  
New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers  
Mutual Telephone Company, Steelville Telephone Exchange, Inc., Stoutland  
Telephone Company.

September 15. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on October 3.

The Commission issued its Order Rejecting Interconnection Agreement on October 20, which became effective October 27. The Commission's order noted that the Missouri Secretary of State's Office had no records of a corporation named "Dial Call, Inc.," nor did it have records that the fictitious name "Nextel Communications" had been registered by a corporation named "Dial Call, Inc." The Commission found that Nextel had not complied with 4 CSR 240-2.060(1)(A). The Commission did, however, state that this case would remain open for a period of thirty days from the effective date of the order, and that if Nextel filed a pleading within that time which specified the legal name of the Company, and which provided evidence of the registration of any fictitious name with the Missouri Secretary of State's Office, the application would be processed.

On November 26, GTE and Nextel West Corp. d/b/a Nextel Communications or d/b/a Nextel (Nextel West) filed a pleading entitled "Correction of Deficiency and Request for Approval." Nextel West states that in executing the Agreement, it erroneously listed its corporate name as Dial Call, Inc. instead of OneComm Corporation, N.A. (OneComm), which was its actual name at the time. Nextel West has changed its name in Missouri from OneComm to Nextel West, and received an Amended Certificate of Authority of a Foreign Corporation from the Secretary of State's Office on September 22. Nextel West also registered with the Missouri Secretary of State's Office on October 22 the fictitious names "Nextel Communications" and "Nextel," and provided documentation of those registrations. In addition, the parties attached to their pleading a document entitled "Amendment to Interconnection Agreement in the State of

Missouri," dated November 19, which amends the Agreement to replace all references to "Dial Call, Inc." with references to "Nextel West Corp." instead.

The Commission finds that Nextel West has corrected the deficiency noted in the Commission's Order Rejecting Interconnection Agreement, and is now in compliance with 4 CSR 240-2.060(1)(A). Thus the Commission finds that it may address the underlying matter of whether the Agreement filed by the parties should be approved. Because the comments and Staff recommendation were filed at a time prior to the knowledge of Nextel West's appropriate corporate name, the Commission will refer to Nextel West as simply Nextel for the remainder of this order, except for the ordered paragraphs.

As previously indicated, comments were filed on September 15. Although the Small Telephone Company Group and Fidelity filed comments, they did not request a hearing. 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 requested a hearing in this case, the Commission may grant the relief requested based upon the verified application. However, the Commission will consider the comments filed by the Small Telephone Company Group and Fidelity, along with Staff's recommendation.

### 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 (ILEC) and other



telecommunications carriers. The Commission may reject an interconnection agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience and necessity.

The initial term of the Agreement between GTE and Nextel is a six-month period from the effective date of the Agreement; thereafter, the Agreement shall continue in effect for consecutive six-month terms until one of the parties gives a 60-day written notice of termination.

The Agreement describes various network interconnection architectures which the parties may use to interconnect their networks. These include the following interconnection methods: Mid-Span Fiber Meet, Expanded Interconnection Service (EIS) Arrangement (including virtual EIS arrangements), or a Special Access Arrangement. Nextel will provide GTE with PLU (Percent Local Usage) factors to identify the proper jurisdiction of each call type. Signaling System 7 (SS7) Common Channel Signaling will be used to the extent available. The terms for physical collocation and existing virtual collocation are set forth in Article VI of the Agreement. In addition, either party may deliver traffic destined to terminate at the other party's end office via another local exchange company's (LEC's) tandem provided that the parties have established compensation agreements specific to such an arrangement.

In addition, the Agreement contains rates for transport and termination, and transiting. The transport and termination rates are subject to a true-up based upon the rates which are decided by the Commission in cost analysis proceedings. The Agreement also includes an Option to Reopen Agreement with regard to pricing other than the rates for transport and termination. If this option is invoked and the parties are unable to reach agreement within 45 days, either party may petition the Commission to resolve the dispute pursuant to the pricing authority granted

to the Commission under the Telecommunications Act of 1996. The rates for the exchange of local traffic are specified in Appendix C of the Agreement. Rates for the transport and termination of non-local traffic shall be in accordance with the parties' respective access tariffs. The parties shall reciprocally terminate local traffic originating on each other's networks, using either direct or indirect network interconnections. Only traffic originated by the parties' end user customers is to be exchanged under this agreement.

GTE will provide tandem switching at GTE access tandems for traffic between Nextel and GTE end offices subtending the GTE access tandem, as well as for traffic between Nextel and non-GTE end offices subtending GTE access tandems. Nextel assumes responsibility for compensation to non-GTE end office companies where traffic has been transported to a non-GTE end office via a GTE tandem.

Finally, basic 911 service will be provisioned by GTE over an auxiliary connection. The parties agree to ensure access to Enhanced 911 (E911) service when technically feasible; however, a separate agreement is necessary between the parties for E911 services to be provided by GTE. The parties have agreed to procedures for handling misdirected repair calls. GTE will provide to Nextel directory assistance services and operator services pursuant to separate contracts to be negotiated in good faith between the parties. To the extent required by the Act, the parties will provide each other access to poles, ducts, conduits, and rights-of-way on terms comparable to those offered to any other entity pursuant to tariffs or standard agreements.

On September 15, the Small Telephone Company Group and Fidelity filed their comments. The Small Telephone Company Group and Fidelity indicate that terminating traffic originated by Nextel that is terminated

to a third-party LEC's end office through GTE's tandem switch will be indistinguishable from other traffic that GTE terminates to that third-party LEC. The third-party LECs will have no way of knowing if Nextel traffic is being terminated in its end offices, or how much traffic is terminated, without receiving specific reports from either GTE or Nextel. Neither GTE nor Nextel has offered to provide such reports to third-party LECs, therefore, the third-party LECs will be unable to determine what amounts should be billed to Nextel. Further, the Small Telephone Company Group and Fidelity are concerned about the administrative burden placed upon their companies to administer the proliferation of interconnection agreements and billing arrangements for small amounts of traffic.

In conclusion, the Small Telephone Company Group and Fidelity suggest that the Commission should review, either now or in the future, the business relationships proposed in this interconnection agreement, to determine whether such relationships are equitable to third-party LECs with whom the wireless carriers do not physically connect their networks, and ask that the Commission carefully consider its approval of the present interconnection agreement.

Staff filed its recommendation on October 3. Staff first states that the issues raised by the Small Telephone Company Group and Fidelity will be addressed by the Commission in Case No. TT-97-524. Staff adds that its position on this matter can be found in the testimony in that case, as well as in several previous Staff recommendations such as Case Nos. TO-97-523 and TO-97-533. With regard to the substance of the comments, Staff states that after talking with a GTE official, Staff discovered that although GTE does not currently produce a report which would detail the source of wireless originating traffic and minutes of use (MOUs), GTE plans to begin providing such a report within the next few

weeks. Staff has some concerns regarding the lack of ability to report the source of wireless originating traffic and the MOUs. However, Staff notes that in Case No. TO-97-533, which also involved a wireless interconnection agreement with GTE, the Commission ordered the parties to file a written response addressing possible solutions to the problem. Staff anticipates that the Commission will issue a similar order in this case.

In conclusion, Staff states that it has reviewed the proposed interconnection agreement and believes that the Agreement between GTE and Nextel meets the limited requirements of the Telecommunications Act of 1996. Specifically, Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the interconnection agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the interconnection agreement.

### 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 joint application, the interconnection agreement, the comments of the Small Telephone Company Group and Fidelity, and Staff's recommendation. Based upon that review, the Commission finds that the interconnection agreement filed on July 29, as amended on November 26, meets the requirements of the Act in that it does not unduly discriminate against a non-party carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity.

However, the Commission has some concerns regarding the provision which states that if the Option to Reopen Agreement is invoked and the parties are unable to reach agreement within 45 days, either party may petition the Commission to resolve the dispute pursuant to the pricing authority granted to the Commission under the Telecommunications Act of 1996. While the parties may make such an agreement among themselves, they may not confer jurisdiction upon the Commission where none exists. Commission approval of agreements containing this or similar language should in no way be interpreted as acquiescence in the underlying assumption of Commission jurisdiction. Rather, the Commission will ascertain its jurisdiction to resolve any such disputes at the time its jurisdiction is invoked.

The Commission has also considered the concerns raised by the Small Telephone Company Group and Fidelity, and finds that it may be possible to address those concerns in Case No. TT-97-524 or Case No. TO-97-533. Although Case No. TT-97-524 involves SWBT and not GTE, it is possible that any resolution of that case may provide guidance for dealing with the issue on a statewide basis. In addition, the Commission notes that GTE filed a response on October 9 in Case No. TO-97-533, which indicates that GTE will now have the capability to produce a summary report to third-party LECs that details the source of wireless originating traffic and the MOUs. GTE claims that the summary report will be available in the mid-to-late part of October, 1997. GTE also states that it will assess a charge for the processing and distribution of the summary report. The Commission finds that it is not necessary to require the parties to file a written response in this docket addressing possible solutions to the problem raised in the comments, since it is unlikely that such a response will be different from the response filed in Case No. TO-97-533. The problem as

it pertains to GTE can be addressed in that case, but will be equally binding on the parties in this case.

### 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 1997, 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 non-party or inconsistent with the public interest, convenience and necessity under Section 252(e)(2)(A). Based upon its review of the interconnection agreement between GTE and Nextel, and its findings of fact, the Commission concludes that the interconnection agreement filed on July 29, as amended on November 26, is neither

discriminatory nor inconsistent with the public interest, and should be approved.

**IT IS THEREFORE ORDERED:**

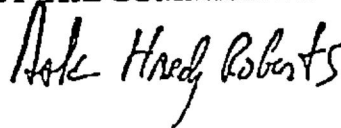
1. That the interconnection agreement filed on July 29, 1997 between GTE Midwest Incorporated, GTE Arkansas Incorporated, and Nextel West Corp. d/b/a Nextel Communications and d/b/a Nextel is approved as amended on November 26.

2. That the parties shall file a copy of the entire interconnection agreement, including the amendment thereto, with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

3. That any further 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 December 26, 1997.

**BY THE COMMISSION**



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

(S E A L)

Lumpe, Ch., Crumpton,  
Murray, and Drainer, CC., Concur.

Bensavage, Regulatory Law Judge



y: Bensavage / Pridgin

12-11-97  
Date Circulated

TO-98-41  
CASE NO.

[Signature]  
Lumpert, Chair

[Signature]  
Crumpton, Commissioner

[Signature]  
Murray, Commissioner

\_\_\_\_\_  
Commissioner

[Signature]  
Drainer, Vice-Chair

12-16-97  
Agenda Date

Action taken: 4-C.A.A.

Must Vote Not Later Than \_\_\_\_\_

**STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 16th day of December, 1997.

Dale Hardy Roberts

\_\_\_\_\_  
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge