

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 7, 2002**

CASE NO: TO-2002-316

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

Sincerely,

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

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

The Matter of the Adoption of the Verizon California f/k/a)
GTE California Incorporated/Sprint Communications)
Company L.P. Interconnection Agreement by Sprint)
Communications Company L.P., Pursuant to Paragraph) **Case No. TO-2002-316**
32 of the BA/GTE Merger Conditions Released by the FCC)
in CC Docket No. 98-184 under PURA 95 and the)
Telecommunications Act of 1996)

ORDER APPROVING INTERCONNECTION AGREEMENT

This order approves the interconnection agreement referenced in the application filed on January 9, 2002, by GTE Midwest Incorporated d/b/a Verizon Midwest, notifying the Missouri Public Service Commission of Verizon's adoption under the federal Telecommunications Act of 1996 by Verizon and Sprint Communications Company L.P. of a previously approved interconnection agreement. That interconnection agreement was between Verizon California, Inc. f/k/a GTE California Incorporated, and Sprint, approved by the California Public Utilities Commission in application number 00-09-031, dated and effective on March 15, 2001.

Although Sprint is a party to the Agreement, it did not join in the application. On January 11, 2002, the Commission issued an order making Sprint a party in this case and directing any party wishing to request a hearing to do so by January 31, 2002. No requests for hearing were filed.

The *Deffenderfer* case held that 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.¹ Since no one has requested a hearing, the Commission may grant the relief requested based on the application.

The Staff of the Commission filed a memorandum and recommendation on February 4, 2002, recommending that the Agreement be approved.

Discussion

Staff's pleading stated, *inter alia*, that its

understanding is that in the cases wherein the Commission has taken notice of the adoption of previously approved interconnection agreements, the Commission intends that the interconnection agreement has been previously approved by **this** Commission. Given that in the instant case, this Commission has not previously approved the interconnection agreement submitted, it would not be proper to recommend that the Commission take notice of the adoption. Staff did, however, review the instant interconnection agreement to determine whether it met the limited requirements of the Act, specifically, whether the agreement discriminates against telecommunications carriers not party to the agreement, and whether it is against the public interest, convenience, or necessity....Staff recommends the Commission approve the instant interconnection agreement, as if it had been submitted under Section 251(e) (*sic*) of the Act. (Emphasis in original.)

Thus, the Commission will treat this case as if it were for the approval of the Agreement and not as if it were an adoption thereof.

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection or resale agreement negotiated between an incumbent local exchange company and a provider of basic local exchange service. The Commission may reject an interconnection or resale agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience, and necessity.

¹ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Staff memorandum recommends that the Agreement be approved, and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties, and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval. Staff also noted that both parties have basic local certificates.

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 concludes that the 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 under 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.² In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.³ This duty is in keeping with the Commission's practice under its own

² 47 U.S.C. Section 252.

³ 47 U.S.C. Section 252(h).

rules of requiring telecommunications companies to keep their rate schedules on file with the Commission under Commission Rule 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 or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. If approved or recognized, 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. When a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision and prepared a recommendation. When 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 reject a negotiated agreement only 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 Agreement between Verizon and Sprint 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 interconnection agreement between GTE Midwest Incorporated d/b/a Verizon Midwest and Sprint Communications Company L.P., filed on January 9, 2002, adopting the terms and conditions contained in the interconnection agreement between Verizon California, Inc. f/k/a GTE California Incorporated, and Sprint Communications Company L.P., approved by the California Public Utilities Commission in application number 00-09-031, dated and effective on March 15, 2001, is hereby approved.
2. That any changes or modifications to this Agreement must be filed with the Commission under the procedure outlined in this order.
3. That this order will become effective on February 17, 2002.

4. That this case may be closed on February 18, 2002.

BY THE COMMISSION

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

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

(SEAL)

Bill Hopkins, Senior Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 7th day of February, 2002.

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 7th day of Feb. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

