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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 6th day of January, 1999.

In the Matter of the Application of Choctaw Communications, L.C. d/b/a Smoke Signal Communications for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in the State of Missouri and to Classify Said Services and the Company as Competitive.	)))))))	Case No. TO-99-167

ORDER APPROVING RESALE AGREEMENT

Choctaw Communications, L.C. d/b/a Smoke Signal Communications (Choctaw) filed an application on October 19, 1998, for approval of an interconnection agreement (the Agreement) between Southwestern Bell Telephone Company (SWBT) and Choctaw. 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.* Choctaw wants to resell certain SWBT telecommunications services to Choctaw's local exchange business and residential end users in Missouri.

The Commission issued an Order and Notice on October 14 which required requests for a hearing or requests to participate without intervention to be filed no later than November 23. SWBT filed an application to intervene on November 23. In its application SWBT stated that approval of the resale agreement "will promote the public interest by increasing customer choice of local service providers." Since SWBT is a party to the Agreement, the Commission will grant SWBT intervenor

status. No other parties filed applications to participate and no requests for a hearing were filed. The Commission Staff (Staff) filed a Memorandum on December 10 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 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 (LEC) 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.

Staff stated in its recommendation that the resale Agreement between SWBT and Choctaw is to become effective ten days after its approval by the Commission. The initial term of the contract is ninety days and shall continue until terminated by either party.

The 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 provided

that all modifications to the Agreement be submitted to the Commission for approval. The Staff also recommended that the Commission require the agreement to be submitted by the parties with all pages consecutively numbered. These conditions have been applied in prior cases where the Commission has approved similar agreements. Staff noted in its recommendation Choctaw submitted an Application for a Certificate of Service Authority and for Competitive Classification on June 18, in Case No. TA-98-561[1].

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. 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.

[1] Choctaw's application for basic local service authority was subsequently granted on December 22.

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 Agree-

ment. 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 SWBT and Choctaw 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 Southwestern Bell Telephone Company's Application for Intervention is granted.

2. That the resale agreement between Choctaw Communications, L.C. d/b/a Smoke Signal Communications and Southwestern Bell Telephone Company filed on October 19, 1998, is approved.

3. That Choctaw Communications, L.C. d/b/a Smoke Signal Communications and Southwestern Bell Telephone Company 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 January 20, 1999. The company 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.

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

5. That the Commission, by approving this agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the requirements of the competitive checklist found in 47 U.S.C. Section 271.

6. That this order shall become effective on January 16, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Senior Regulatory Law Judge