

75

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 8th  
day of April, 1999.

In the Matter of the Application of Simply )  
Local Services, Inc., for Approval of a ) Case No. TO-99-329  
Resale Agreement under the Telecommunica- )  
tions Act of 1996. )

**ORDER APPROVING RESALE AGREEMENT**

On February 5, 1999, Simply Local Services, Inc. (SLS), filed an application with the Commission seeking approval of its resale agreement (Agreement) with Southwestern Bell Telephone Company (SWBT) under the provisions of the federal Telecommunications Act of 1996 (the Act). On February 11, 1999, the Commission added SWBT as a party to this action because SWBT is a party to 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 SLS to resell local telecommunications services.

The Commission issued an Order Directing Notice on February 11, 1999, 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 March 26, 1999, 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 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 or resale agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

On November 9, 1998, SLS filed an application in Case No. TA-99-206 for a certificate of service authority to provide basic local exchange telecommunications services on a resold basis and exchange access services. That application was approved, and the requested certification granted, on March 23, 1999, effective April 2, 1999.

The initial term for the Agreement is one (1) year from the effective date and it will continue in effect for consecutive one (1) year terms until either party gives the other party at least sixty (60) calendar days written notice of termination.

The Agreement indicates that where SWBT is the 911 service provider, SWBT shall provide 911 service as an element of local exchange

services available for resale. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories. The Agreement contains a "snap-back" provision similar to those that have appeared in other resale and interconnection agreements.

The Staff Memorandum recommends that the Agreement be approved, and notes 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 that the Commission direct SLS and SWBT to submit a copy of the executed Resale Agreement with the pages numbered seriatim, and to submit any further modifications or amendments to the Commission for approval.

### 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.

## 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 seriatim 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 SWBT and SLS 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 Resale Agreement between Southwestern Bell Telephone Company and Simply Local Services, Inc., filed on February 5, 1999, is approved.

2. That the parties shall file an executed copy of this Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim at the bottom right hand corner of each page, no later than April 22, 1999. The parties shall file on the same date a notice in the official case file advising the Commission that the agreement has been submitted 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 Simply Local Services, Inc., shall not provide basic local telecommunications services in Missouri until it has approved tariffs on file with the Commission.

5. That this Order shall become effective on April 20, 1999.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large, stylized 'D' and 'R'.

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

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

Thompson, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION